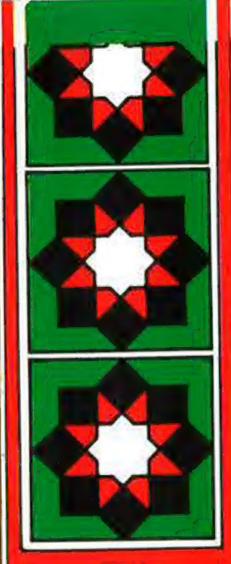
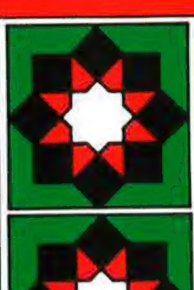









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Islam and Current Medical Concerns
(3)

THE ISLAMIC VISION OF SOME MEDICAL PRACTICES

Full Text of the Symposium on the Islamic Vision of some Medical Practices, Held on April 18, 1987 A.D. (Shaban 20, 1407 H.)

Supervision and Introduction by

Dr. Abd El-Rahman Abdulla Al-Awadi

Minister of Public Health and of Planning
Chairman of the Islamic Organization
for Medical Sciences

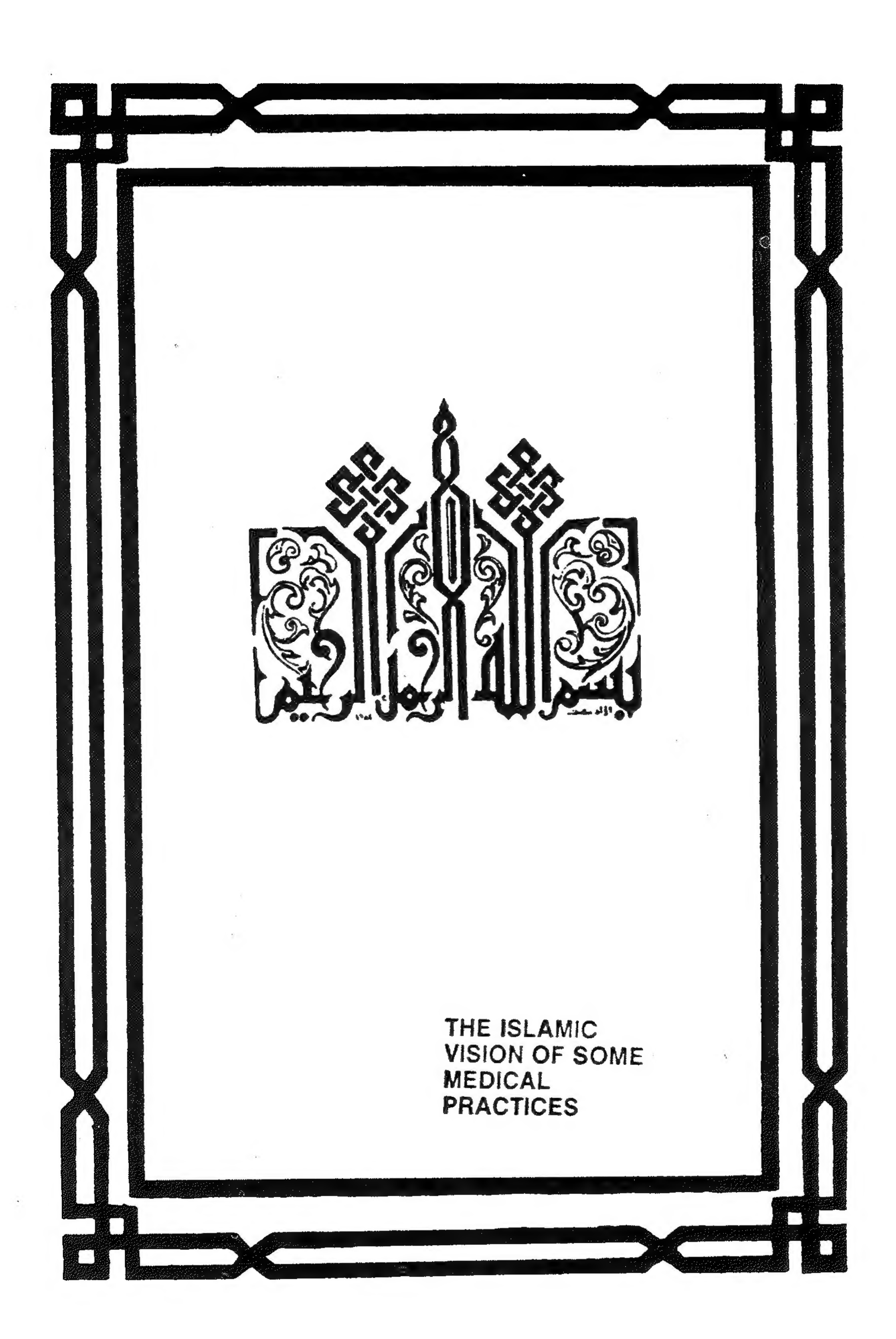
Edited by

Dr. K. Al-Mazkur
Dr. A. Al-Saif
Dr. Ahmad Rajaii Al-Gindi
Dr. A. Abu-Ghudda

Revised by

Prof. Hassan Hathout

1989



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Third Volume

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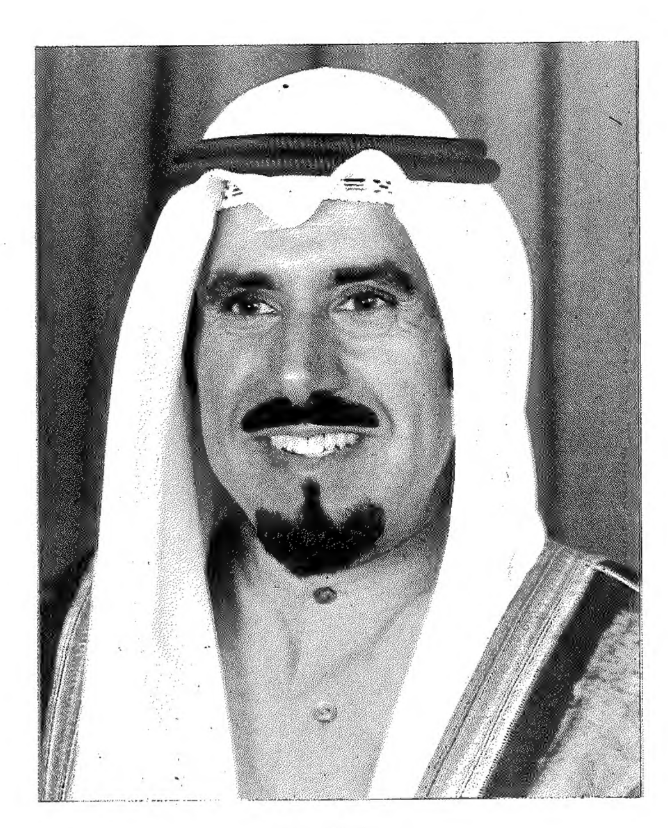
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His Highness
SHEIKH JABER AL-AHMED AL-JABER AL-SABAH
Amir of the State of Kuwait





His Highness
SHEIKH SAAD AL-ABDULLA AL-SALEM AL-SABAH
Crown Prince & Prime Minister





On the directions of His Highness the Amir of the State of Kuwait, Sheikh Jaber Al-Ahmad Al-Sabah;

And out of His Highness's keen desire to disseminate culture which combines religion with science in its multifarious fields and to present it to the Islamic nation particularly to those concerned with the Islamic civilization;

And as part of Kuwait's contribution to enriching the Islamic library; Kuwait Foundation for The Advancement of Sciences in collaboration with the Islamic Organization for Medical Sciences, has completed the translation and printing of this series of books that deal equally well with both Islamic Jurisprudence and Medicine.





بتوجيه كريم من

حضرة صاحب السمو الشيخ
جابر الأحمد الصباح حفظه الله
أمير دولة الكويت

ورغبة من سموه في نشر الثقافة الجامعة بين الدين والعلم في آفاقه المتعددة وتقديمها إلى الأمة الإسلامية والمعنيين بشؤون الحضارة الإسلامية في العالم، ومساهمة في إثراء المكتبة الإسلامية، قامت مؤسسة الكويت للتقدم العلمي بالتعاون مع المنظمة الإسلامية للعلوم الطبية بترجمة وطباعة هذه السلسلة من الكتب الجامعة بين الفقه الإسلامي والطب





In the name of Allah, the Rahman, the Merciful

INTRODUCTION

Praise be to Allah who guided us to Islam and gave us honour by being Muslims, and blessings and peace be upon prophet Muhammad and all his family and companions.

The entire world is now facing a cultural crisis never witnessed throughout the history of mankind. The findings of science that Allah willed to be harnessed for man's service have eventually become a dominating master and an obedient servant in the hands of politicians and those in power, but for humanity at large a sword threateningly drawn. The arsenals of weapons have grown chock-full of the tools of destruction and devastation and the race has now peaked in the hope of owning the most effective tools of annihilation; on the other hand, millions of people are dying out of hunger, disease and homelessness.

Strangely enough, what is now spent on weapons of destruction and devastation is several fold that which is spent on food, clothing and medicine. Had the world addressed itself, in an equal measure and with the same capabilities, to combating the enemies of humanity, namely, hunger, poverty and disease, there would have never been anyone who is hungry, shelterless or needy on this earth. Most scientific research is directed to serve evil more than good. Even the field of medicine was not spared the affliction, and many deviated concepts that in no way come under any moral principle spread throughout the world, and the medical profession faced a dangerous predicament with the most cherished code of ethics which, throughout the years and ages was cause of respect and esteem on the part of both the rulers and the ruled. Those who were engaged in medical sciences used to command a prestigeous status in society and were examples for high morals and noble qualities. However, this has now been shaken up due to the moral corruption and degeneration that characterize a category of the people naturally disposed to weakness, and so they mercilessly wanted to assassinate th

long-established code of ethics, and their call was welcomed by a few who are after quick gain or are ignorant of the divine teachings which call for sacrifice and giving or, perhaps, are prompted by a disposition to satisfy crude instinct regardless of subsequent problems.

Still, it is quite auspicious that the majority in the medical profession are, nonetheless, adhering to the convenant, tenaciously clinging to the strong rope of Allah. Medicine is singled out, from amongst the different disciplines, natural sciences and the arts, for the special relationship binding a patient to his doctor, which is a distinctive direct one. Usually a patient confides to his doctor the most private and personal matters, being unhesitantly sure of the secrecy; consequently, if this rule is broken it will result in a rift in this inter-relation which, in turn, will affect the patient's health. To err is human, but the best of those who err are the repentant, and the door to repentance is open, for our Lord the Rahman The Merciful forgives all sins except to associate a partner with Him.

Yet, in view of the deterioration of morals, the high rate of vile deeds and the gradual disappearance of virtue, the cards became mixed up, the heart full of uneasiness and the vision concerning what is religiously permissible "halal" and what is impermissible "haram" not clear, and we had no way but to resort to the unfailing strong rope of Allah, tenaciously cilinging to it as there is no defender from the decree of Allah save for one whom He has guarded.

The problem which gave rise to psychological conflict and caused some to be really puzzled, not to mention the different opinions and attitudes concerning it is that the physician may be faced by a given case where a forbidden act was committed. Will this prompt him towards imposition of punishment "qisas" in earnest concern with Islam and Muslims, regardless of the medical tradition respecting professional confidentiality? Or will he take the attitude of the sincere adviser keeping the secret deep in his heart?

Therefore, we have deemed it momentous to raise the topic of "The Islamic Vision of Some Medical Practices" with a view of elucidating the opinion of the Islamic Sharia on matters that are of concern to the doctor.

With this aim in mind, we invited both Sharia and medical scholars to explain what the medical practice confronts due to certain deviations so that concepts may be corrected according to the Sharia of Islam.

This is a full documentation of the works of the symposium.

It is our hope that by favour of the Almighty this work will be successful in elucidating vague issues and that we all be guided to the straight path.

Dr. Abd El-Rahman Abdulla Al-Awadi
Minister of Public Health and
Minister of Planning
Chairman of I. O. M. S.



PROGRAMME OF MEDICAL JURISPRUDENCE THIRD SYMPOSIUM ON "THE ISLAMIC VISION OF SOME MEDICAL PRACTICES"

Held from 18 to 21 April, 1987 A.D.

First Day: Saturday 18/4/1987
Opening: 11.30

"Confidentiality in The Medical Profession"

First Session : a) On Medicine

Chairman : H.E. Dr. Abdulrahman Abdullah Al-Awadi

Deputy-Chairman : Dr. Muhammad Naem Yaseen

Rapporteur : Dr. Najib Al-Othman

Medical views were presented by Dr. Hassan Hathout on behalf of his fellow-doctors who submitted papers.
they are:

Papers :

1. On a "Secret Disclosure"
   Dr. Saddiqa Al-Awadi, et al
2. "Secret Disclosure and Eye Diseases"
   Dr. Abdulrazzaq Al-Samerra'i
3. "Some Psychiatric Issues and the Need for Islamic Ruling".
   Dr. Durri Ezzat

Discussion

Break & Al-Asr "Afternoon" Prayer 2.30 - 4.30

Second Session : b) On Jurisprudence

Chairman	:	His Eminence Sheikh Ezzuddeen Al-Khateeb Al-Tamimi
Deputy-Chairman	:	Dr. Abdullah Basalamah
Rapporteur	:	Dr. Muhammad Othman Shabir
Papers	:	1. "The Doctor Between Disclosure and Withholding" His Eminence Sheikh Muhammad Al-Mokhtar Al-Salami
		2. "Secret Disclosure in Islamic Sharia" Dr. Muhammad Sulaiman Al-Ashqar
		3. "Legal Consequence for A Doctor Disclosing Some Confidences for Public Good in Islamic Sharia" Dr. Hassan Al-Shazli
		4. "Secret-Disclosure" Dr. Tawfiq Al-Wa'i
		Discussion

Break & Al-Maghrib "Sunset" Prayer 6.00 - 6.30

Lecture by His Eminence Sheikh
Muhammad Al-Ghazali

Second Day: Sunday 19/4/1987 A.D.

"When Conventional Law Is In Conflict With Islamic Sharia"

First Session	:	a) On Medicine 9.30 - 11.45
Chairman	:	H.E. Dr. Hussain Al-Jazaeri
Deputy-Chairman	:	Dr. Ojail Al-Nashmi
Rapporteur	:	Dr. Adel Al-Tawhid
Papers	:	1. "When There Is A Conflict Between Sharia and Law: What Attitude Shall A Doctor Take"? Dr. Salah Al- Ateeqi

2. "Attitude of The Doctor vis-a vis Sharia and Law"
Dr. Abdulrazzaq Al-Samerra'i

Discussion

Break & Al-Zuhr "Noon" Prayer 11.45 - 12.30

Second Session : b) On Jurisprudence 12.30-2.00

Chairman : Sheikh Abdulrahman Ibn Abdullah Al-Mahmoud

Deputy-Chairman : Dr. Salem Najm

Rapporteur : Dr. Abdulsattar Abu-Ghudda

Papers : 1. "Attitude of The Doctor and Care Giver When Conventional Law Conflicts With Islamic Sharia".
Dr. Muhammad Abduljawwad Muhammad.

2. "When There is A Conflict Between Sharia and Law: What Is The Attitude of the Doctor and The Care-Giver. And An Appendix on: How Far Should A Doctor Be Committed to Implementing Administrative Decisions That Do Not Conform To Law"
Prof. Dr. Mansour Moustafa Mansour

Discussion

Break & Al-Maghrib "Sunset" Prayer 6.00 - 6.30

Third Session : c) Transplantation and Sale of Organs

Chairman : His Eminence Sheikh Abdulmonem Al-Zain Al-Nahas

Deputy-Chairman : Dr. Abdulrazzaq Al-Bahr

Rapporteur : Dr. Oneizi Al-Oneizi

Papers : 1. "Donation, Sale and Unbequeathed Human Organs"
Dr. Mokhtar Al-Mahdi

2. "Legal Consequences of Sale Or Donation of Human Organs"
   Dr. Muhammad Sayed Tantawi

3. "Responsibility of Doctors As Viewed By Jurists"
   Dr. Muhammad Sayed Tantawi

4. "Disposal of Human Organs"
   Dr. Muhammad Fawzi Faidullah

5. "Sale of Human Organs"
   Dr. Muhammad Naem Yaseen

6. "Sales of Human Organs in The Balance of Legitimacy"
   Mr. Muhammad Yehia Ahmad Abdul-Fotouh

Discussion

Third Day: Monday 20/4/1987 A.D.

"Matters Related To Gynaecology"

First Session : a) On Medicine 9.30 - 11.45

Chairman : Dr. Abdulfattah Shawqi

Deputy-Chairman : His Eminence Dr. Muhammad Sulaiman Al-Ashqar

Rapporteur : Dr. Muhammad Al-Jasem

Papers :

1. "Plastic Surgery: Medical Concept and Practice"
   Dr. Majed Abdulmajeed Tahboub

2. "Hymenorrhaphy"
   Prof. Dr. Kamal Fahmi

3. "Menses, Puerperium and Pregnancy: Minimum and Maximum Periods"
   Dr. Nabiha Muhammad Al Gayyar

4. "Fate of Bank-Deposited Embryos"
   Dr. Abdullah Hassan Basalamah

5. "What To Do With Surplus Fertilized Ova"
   Dr. Ma'mun Al-Haj Ali Ibrahim

6. "Sexual Assault"
   Dr. Saddiqa Al-Awadi, et al

Discussion

Break & Al-Zuhr "Noon" Prayer 11.45 - 12.30

Second Session : b) On Jurisprudence and Law 12.30 - 2.00

Chairman : His Eminence Sheikh Muhammad Al-Mokhtar Al-Salami

Deputy-Chairman : Dr. Raji Abbas Al-Takriti

Repporteur : Mr. Fahmi Hweidi

Papers :
1. "Provisions For Plastic Surgery in Islamic Jurisprudence"
   Dr. Muhammad Othman Shabir

2. "Menses, Puerperium and Prgenancy: Minimum and Maximum Periods"
   Dr. Omar Sulaiman Al-Ashqar

Discussion

Third Session : c) On Jurisprudence 4.30 - 6.00

Chairman : His Eminence Dr. Muhammad Sayed Tantawi

Deputy-Chairman : Dr. Tawfiq Al-Tamimi

Rapporteur : Mr. Faisal Al-Zamel

Papers :
1. "Hymenorrhaphy From An Islamic Perspective"
   His Eminence Sheikh Ezzuddeen Al-Khateeb Al-Tamimi

2. "Hymenorrhaphy In The Balance of Sharia Intentions"
   Dr. Muhammad Naem Yaseen

Discussion

Break & Al-Maghrib "Sunset" prayer 6.00 - 6.30

Fourth Session	:	a) On Jurisprudence 6.30 - 8.30
Chairman	:	His Eminence Sheikh Ezzuddeen Al-Khateeb Al-Tamimi
Deputy-Chairman	:	Dr. Muhammad Haitham Al-Khayyat
Rapporteur	:	Dr. Omar Al-Ashqar
Comments	:	1. Both Sheikh Muhammad Al-Mokhtar Al-Salami and Sheikh Muhammad Al-Ghazali will undertake commenting on the paper of Dr Saddiqa Al-Awadi and her colleagues on: "Sexual Assault"
		2. Both Dr. Hassan Al-Shazli and Dr. Abdulsattar Abu-Ghudda will undertake commenting on the paper of Dr. Abdullah Basalamah and Dr. ma'mun Al-Haj Ibrahim.

Fourth Day: tuesday 21/4/1987 A.D.

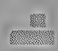
"Recommendations" **5.00 - 6.00**

Chairman	:	H.E. Dr. A. A. Al-Awadi
Deputy-Chairman	:	His Eminence Sheikh Muhammad Al-Ghazali
Rapporteur	:	Dr. Salah Al-Ateeqi

PART ONE

CONFIDENTIALITY IN THE MEDICAL PROFESSION





FIRST : MEDICAL PAPERS

- The Sanctity of Professional Secrecy
  Dr. Hassaan Hathout
- Secret-Disclosure
  Dr. Saddiqa Al-Awadi et al
- Secret-Disclosure and Eye Diseases
  Dr. Abdulrazzaq Al-Samarra'i
- Some Psychiatric Issues and The Need For Islamic Ruling
  Dr. Durri Ezzat



THE SANCTITY OF PROFESSIONAL SECRECY

Prof. Dr. Hassan Hathout

Faculty of Medicine,
University of Kuwait

Precis

★ Confidentiality is a deeply rooted principle of the medical Profession, and an absolute value which is not left to doctors' evaluation, discretion or preference in each case examined.

★ This value perfectly conforms to the teachings of Islam; and Islam adds to its strength and deep-rootedness.

★ Negligence of this value would undermine the medical profession which is an indispensable practice to mankind. Such negligence, based on unjustifiable transient and individual pretexts, would entail grave distress, and substantial loss in the long run that far outweighs temporary benefit.

★ Nevertheless, each rule has some exceptions dictated by a stronger necessity. Neither doctors nor health authorities are to determine such exceptions, for that is the duty of the law-maker. Law has specifically enumerated these exceptions, and no additions or deletions should be made except by virtue of a legal provision. It is our moral obligation to make public, at all times, the law-stipulated cases for secret divulgence so that the public would not assume our actions to be betrayal of the professional secrecy - intentional or unintentional. Legal authorities should not be assigned this task, for it is firmly acknowledged in legal tradition that "Ignorance of the law is no excuse."

Professional confidentiality is a basic brick in the edifice of medical practice, without which the practice is threatened by collapse. Nevertheless, my actual observations show that this value is still shrouded with misty vagueness in the eyes of a significant number of practicing doctors. I think that this serious value has not been rendered due service in medical colleges. More often, it remains a common slogan habitually repeated and generally applied without embracing its precise and detailed dimensions.

Many doctors still lack full awareness of the doctor-patient relationship, and pay no heed to this until a blunder befalls, though it may not. On the contrary, in countries where public awareness of rights strikes deep roots, sometimes to an excess, doctors are well aware that they are not immune from litigation, and therefore feel compelled to seek precision and accuracy in their practice to avoid being sued on charges of omission or commission; the issue of "Profession Confidentiality" is included in this sense.

There is evidence that the awareness of doctors as regards profession confidentiality has not yet reached the desired degree. You may for instance come across a doctor at his wit's ends, handling a specific case with overwhelming anxiety as he seeks the intuition of his heart or the counsel of colleagues or even the findings of symposia and conferences, describing the concomitants of a single case in great perplexity as to whether or not he should divulge the secret.

Before commenting on this example, I would like to present an overall review of profession confidentiality:

The sanctity of profession confidentiality in medicine is a deeply rooted legacy. Since the very early stages of this profession, the medical practice has cherished and endeavoured to safeguard this value. The physician, Imhotep of ancient Egypt used to have his students take an oath not to divulge any secrets of their patients. Then came the Greek physician, Hippocrates, whose oath is still widely taken by graduates of most medical schools. This oath implies that all information, medical or non-medical, obtained by the physician through audible, visual or deductive means should be treated as secrets that must not be divulged being protected by professional confidentiality. Then emerged the sun of Islam rising over the entire world, as a belief, a law, a state, a call, then a civilization culminating in the Islamic pan-nation, the best community sent forth unto mankind, with the best civilization that sheltered man. It confirming conventions of the pre-Islamic era when not conflicting with the religion, and even deemed them human virtues attained by Man in the course of history: "Use thou indulgence and enjoin seemliness and turn away from the ignorant." Consequently "Professional Confidentiality" gained firmer stability in medical practice. This is mentioned in "Tabaqat Al-Attiba", "Physicians' Classes", by Ibn-abi Osaibi'a, and ascertained by the chief physician of Egypt. Ali Ibn Radwan, 453 A.H. Muhazzab Al-Deen Ibn Hobal Al-Baghdadi recommended that a confidentiality oath be taken. One of the functions entrusted to "Al-Mohtasib", (nowadays: a Minister of

Interior) was having physicians take the Hippocratic oath. Moreover, the oath of confidentiality is enshrined in the "Islamic Code of Medical Ethics" of the First International Conference on Islamic Medicine, Kuwait, 1980; and also in the "Physician's Oath" incorporated in this Constitution, both adopted by many Islamic countries, let alone the praise of some non-muslim bodies.

I would like to make clear that Islam has not confined confidentiality to doctors, for it is rather a principle that should be adhered to by all Muslims. Doctors, however, were placed at the top of the hierarchy since their profession directly affects human integrity, and the medical practice would not, therefore, flourish until both doctor and patient are absolutely confident that their shared information is undivulgeable, whether the information is good or evil, repugnant or pleasant, honorable or shameful. Lack of this absolute confidence may strongly shatter the medical practice. The general ethics of Islam include that you should not tell about an absent fellow man what he would not like, even though you may be telling the truth. The Prophet, may the peace of Allah be upon him, enumerated three signs of the hypocrite:

> *"He lies when he speaks, he breaks his promise and he betrays when confided in".*

Even in matters of gravity, attaining information is controlled by certain procedure that should not be overlooked under the false pretexts of fact finding. This is Omar Ibn Al-Khattab climbing a fence to ascertain that a man was drinking alcohol in the garden of his house, but the man reminds him that he had climbed the fence while Allah says,

> *ENTER THE HOUSES BY THE DOORS THEREOF,*

and that he spied on the man though Allah says,

> *AND ESPY NOT.*

And Amir Al-Mu'mineen, i.e. the Commander of the Faithful, could not but obey the Islamic Sharia! Fourteen centuries ago Islam taught us that the end does not justify the means, thus surpassing the continuous development and modern progress in the law science, until it reached the concept of the "Blemished Evidence" and that it is invalid and so any resultant consequence is invalid since the evidence itself is not obtained through sound legal procedure.

It is no wonder that in the light of these "general" teachings of Islam, that the "specific" teachings governing the medical profession are firmer

and stricter.

If Allah's dispensation and justice has willed and ordained Muslims to lag behind and lose leadership of the world because they have not lived up to the specifications and provisions that Allah made their victory conditional upon; still, it is equally true that Europe emerged from the dark Middle Ages to the Renaissance thanks to the Islamic civilization which was duly received by the Europeans though disregarded by the original owners; and amidst the ever-growing complexities of life, confidentiality in the medical profession was not left to customs, conventions and traditions but was provided for in the text of the Law. Pioneering in this respect was the French Law which considered violation of professional secrecy a misdemeanour punishable by imprisonment and fine. All countries followed the same path, including Kuwait by virtue of Law No. 23 of 1960 (article No. 22), later followed by Law No. 25 of 1981 in which the sixth article reads: "The doctor shall not divulge a private, secret obtained through professional practice, whether, such secret is confided to him by the patient, self-deducted or heard of except by virtue of court order for purposes of Justice administration. However a secret may be divulged in the situations hereafter enumerated:

a. If divulgence is to the interest of husband or wife, provided that such is made to both in person.

b. If it is a precautionary measure to prevent a crime. Divulgence of secret in this case shall be confined to the competent official authority.

c. If made by way of reporting a contagious disease as stipulated in current laws. Divulgence in such cases shall be confined to authorities specified by the Ministry of Public Health.

d. If the person entrusting the doctor with the secret approves divulgence to other bodies which he specifies. These then are the cases permissible as enumerated by law and as governed by this provision. Not adhering to this enumeration is per sea violation of the law.

It is obvious that as law commits the doctor to this, the whole of the medical profession and medical services in general are likewise commited, for not only doctors deal with the patient but also assistants in nursing, laboratories, support services, record and file keeping, etc. The administration of medical services is obliged to take whatever measures needed to ensure that confidentiality is fully observed since any patient's information is nothing but a deposit in trust (though not monetary) and

such a deposit must be kept in a container that would not leak, filter or effuse.

Some may imagine that a secret worth keeping is only one that involves infamous, humiliating or shameful informtion of the patient. This is quite wrong, even-though it is common, for confidentiality of patient records is an absolute value that is observed for its own sake. It is not at all necessary for a patient to request of his doctor to withhold the information, for it is naturally and professionally a secret, though the patient may not request considering it so. In his valuable research on "Medical Secrecy", published by "Law and Sharia" Journal, second issue of fifth year, P. 60. Professor Dr. Abdulsalam Al-Termanini reported how a French newspaper, when reporting on the death of a famous French painter, attributed his death to complications of a shameful disease. Since what the paper claimed was mere fabrication which caused grave harm to the reputation of the dead painter, his treating physician, out of doing justice to the man and in defence of the reputation of an innocent man no longer able to defend himself, published an article showing the falsehood of the newspaper report and the true disease that caused the painter's death. This act, in the general convention, is charitable and a commended effort, to establish what is right, but medicalwise it stands in contravention of the strict legal perimeter established by the Law by virtue of the Text on the sanctity of professional confidentiality. The Physician's act was not included in any of the Law enumerated cases allowing divulgence of secret, so an action was brought against the doctor who was found guilty of medical secret divulgence, an appeal was filed but the ruling was ratified. For a secret is a secret in itself and must not be divulged regardless of what harm the divulgence may cause or avert, except by virtue of a legal provision or court ruling.

As a doctor writing on a medical topic as viewed from a medical perspective, I would like to assure all fellow doctors that the uncontroversial principle and the rule of all time is "Keep the Secret". Secret divulgence should not be based on the doctor's judgement, and when considering it one should not consult one's feelings or resort to one's own discretion under certain circumstances, but the text of Law is to be followed to the letter.

It is regrettable, and even embarrassing, that health authorities sometimes issue, to doctors and other personnel, administrative orders not evoking that text of Law and are consequently nonvalid. Whether they initiate such orders or give them to conform with the directives of the

authorities of the Ministry of Interior, like the order to report cases of pregnancy out of wedlock (i.e. illegitimate) to the police, administrative orders do not repeal the legal provisions nor constitutional rights.

These authorities are thus violating both Sharia and conventional law.

The one and only right path for the authorities is to take the legitimate channels for an amendment of the law to accomodate the needs and interests of the society, not to violate the standing Laws or act with a complete disregard to legal provisions. The severest detriment afflicted upon many countries of our Pan-Arab World is the desire for reform that thought commitment to Law an impediment that prolongs procedures and delays justice. With such desires in mind and out of faithfulness the authorities go beyond the limits prescribed by Law disregarding it completely or putting it aside, and forging ahead their own way.

Sanctity of professional confidentiality is a "value" and Law is a "value", and to the maintenance of these values we call; for in them lies all the good, durable and perpetual, even if not immediately expedient. Adherence to these values ensures the establishment of security, stability and peacefulness in the long run, even if otherwise mirrored in the short run.

SECRET DISCLOSURE

Dr. Saddiqa Al-Awadi
Director, Genetics Center
Ministry of Public Health, Kuwait

It is a self-evident truth that any word spoken by a patient to a doctor is considered a secret that must be protected from divulgence by professional confidentiality. The code of ethics and morals adhered to by members of the medical profession provide controls for that. However, the doctor is sometimes trapped in very sensitive situations where professional ethics are in opposition to situations detrimental to the welfare, ethics and traditions of the community. The following are only examples of such situations which face practicing colleagues:

First

A husband comes to a doctor's clinic to find out causes of infertility. After necessary medical tests and examination the doctor finds that the man is sterile, because his semen does not contain any spermatozoa. However, the husband comes later to tell the doctor that after treatment they managed to have a child.

Question

— Should the doctor inform the husband of the nature of his disease and explain how it is impossible for him to impregnate, or should he resort to reticence?

— If the doctor keeps reticent, would he be held accountable before Allah as one who withholds the truth?

— If the child is born and attributed to the father - what is the attitude of the Sharia?

— What are the legal consequences and those of the Sharia for the mother? Is she considered an adulteress?

Second

A couple about to marry request a premarital examination and one of them is found to have a certain disease which may cause malformations in their progeny.

Question

— Should the doctor inform the other partner of the test results when asked or should results be considered an undivulgeable professional secret? Taking into consideration that a premarital examination aims at informing both parties of their health condition, and would the doctor be held accountable when informing the sound partner of the nature of the other partner's disease?

— What is the attitude of the Sharia in this problem?

— If the sound partner did not request the results should he/she be informed or not according to the provisions of Sharia and Law?

Third

A doctor gets to know from a patient who holds a sensitive job (a pilot for example) that he is a drug addict and so are several of his colleagues.

Question

— Should the doctor reveal this secret to his supervisors or inform the competent authorities in order that the necessary measures may be taken so as to save thousands of lives which may otherwise be wasted for the sake of withholding, such a secret?

— If the doctor keeps the secret, would the authorities hold him accountable when the secret is otherwise revealed or should the doctor reveal the secret so as to save lives?

— What is the attitude of the Sharia and Law in such a case?

Fourth

A doctor may know that a patient is committing some sin prohibited by religion and ethics, and at the same time this sinful act is punishable by Law such as homosexuality, although acceptable in certain western communities.

Question

— Should the doctor be reticent and take a passive attitude towards that patient, or do his role as a good member of the community and report the case to the authorities; would that be considered divulgence of a professional secret and the doctor be held legally answerable?

Fifth

A doctor learns that his patient left her child who is born out of wedlock on the street in order to avoid exposure.

Question

— Should the doctor report this information to the authorities or rather keep the secret?

— What is the attitude of the Sharia towards the doctor's reticence? I mean would the doctor be considered a wrongdoer or not?

A doctor discovers a mistake of the colleague, an intentional one (for example, a doctor who operated unnecessarily on a patient that could be treated otherwise, but the doctor was only after money).

— Should the doctor report the colleague to the authorities, thus divulging the secrets of the patient and the colleague?

SECRET DISCLOSURE AND EYE DISEASES

Dr. Abdulrazzaq Al-Samerra'i
Eye Surgeon
Ibn Sina Hospital - Kuwait

Allah, said in the Quran:

AND SET UP YOUR TESTIMONY FOR ALLAH.

(S65:V2)

and said,

O YE WHO BELIEVE! BE YE MAINTAINERS OF JUSTICE, BEARERS OF TESTIMONY FOR ALLAH'S SAKE, THOUGH IT BE AGAINST YOURSELVES OR YOUR PARENTS OR KINDRED. BE HE RICH OR POOR. ALLAH IS HIGHER UNTO EITHER, WHEREFORE FOLLOW NOT THE PASSION, LEST YE DEVIATE. IF YE INCLINE OR TURN AWAY, THEN VERILY OF THAT WHICH YE WORK ALLAH IS EVER AWARE.

(S4:V135)

And Said,

O YE WHO BELIEVE! BE MAINTAINERS OF YOUR PACT WITH ALLAH AND WITNESSES IN EQUITY, AND LET NOT THE HATRED OF A PEOPLE INCITE YOU NOT TO ACT FAIRLY, ACT FAIRLY, THAT IS NIGHEST UNTO PIETY. AND FEAR ALLAH; VERILY ALLAH IS AWARE OF THAT WHICH YE WORK.

(S5:V8)

The Prophet said:

"He who is asked to give witness should give witness".

A man came to the prophet to give witness in a certain case. The Prophet said:

"Raise your head up to the sky. What do you see, he asked, The man said, the sun. He said, is it not exposed by any veil? he said, No. He said to him, in something like this give witness, otherwise do not".

There are cases where a doctor would stand perplexed as to whether he should tell the complete truth, insinuate or refrain and keep silent; or do like Prophet Abraham, when asked who broke the idols:

> *THEY SAID: ART THOU THE ONE WHO HATH WROUGHT THIS UNTO OUR GODS, O ABRAHAM? HE SAID: RATHER HE HATH WROUGHT IT: THIS BIG ONE OF THEM: SO QUESTION THEM, IF THEY EVER SPEAK.*
>
> *(S21:V62,63)*

Let us consider two patients with penetrating eye injury causing severe damage. After repair, there was a good outer appearance of the eye, although practically blind; in the first case, the patient asked me not to tell his wife or she would eventually divorce him. I was astonished, and thank God I was not trapped into that situation for I did not see his wife, but I intended to tell her the truth if she asked. Or should I have accepted his request and kept the truth from her?!

The second case also looked good after repair but was blind due to internal bleeding and complete retinal detachment. The patient was fully aware and did not want his family and relatives to know, lest his fiancé would know and break the engagement. I was repeatedly asked by the patient's relatives and I always answered, "Allah is knower; the patient says he sees". But, of course, I was sure he did not see with a blind eye. I was in this situation guided by what Abraham Prophet said when asked who broke the statues.

There are other issues that always cause me to think and even sometimes worry. For, man may at any time catch a disease or meet an accident, and the eye is no exception. It is susceptible to diseases and accidents as well as senile changes. Many people have a driving licence though they have very poor vision and therefore cannot drive, but, they stubbornly do. Some such disabilities are permanent and some are amenable to treatment such as cataract, which turns the transparent lens opaque.

How can the doctor handle these dangerous drivers?

The doctor should duly advise the patient not to drive at all if the damage is irreversible or temporarily until treated and eye sight is restored. However, most patients would not follow the doctor's recommendations, and claim defiantly that they can drive and that they see well?!.

The Islamic Sharia teaches that secrets should be kept, withheld and never divulged so as to protect doctor-patient relationship, and safeguard people's rights. The Prophet, is quoted to have said

> *"Among those who will be most tortured by Allah on the Day of Judgement is the man who goes to his wife and she comes to him, and then he divulges their secrets".*

(Sahih Muslim, P. 106, Hadith no. 1437).

And he said:

> *"if a man talks about something then he looks around, his talk is a trust"*

(Related by Al-Termidhi in his Sunnan, Sharhul-Awn (6192-93)).

The Prophet also ordered that what goes on in gatherings should be kept and no divulged:

> *"Gatherings are a trust".*

If one attends a gathering, perhaps they do not like to make their conversation known, their secret should be safeguarded, and held in trust.

On the authority of Thabit, Anas reported:

> *"Allah's Messenger (may peace be upon him) came to me as I was playing with playmates. He greeted and sent me on an errand and I made delay in going to my mother. When I came to her she said: what detained you? I said: Allah's Messenger (may peace be upon him sent me on an errand). She said: what was the purpose? I said: It is something secret. Thereupon she said: Do not then divulge the secret of Allah's Messenger (may peace be upon him) to anyone. Anas said: By Allah, if I were to divulge it to anyone, then, I would have divulged it to you".*

(Sahih Muslim, The book of Fadail Al-Sahaba, P.192, Madith no. 4282).

And it is related by Anas Ibn Malek that the Prophet said,

> *"keep my secret and you are a believer".*

(Fath Al-Bari bi Sharh (Sahih Al-Bukhari)).

Some jurists maintained that divulgence of secret is a deadly sin (Al-Kaba'ir by Ibn Hajar Al-Asqalani, vol. 2, p. 27).

Islamic Sharia enjoins the keeping of secrets. If a person comes to know, is entrusted with or gets to know a secret in virtue of his professional practice, he then must not divulge that secret; therefore doctors must not divulge secrets and must lower their sights and not intentionally look at what Allah forbids us to look at and must not unveil that which is veiled. The rule in Islamic Sharia is the inviolability of professional secrecy particularly when the divulgence of such a secret is going to harm the one who entrusted others with the secret whether during his lifetime or after death.

However, a doctor may publish research related to findings achieved without mentioning names of patients examined, exposing their pictures or divulging their secrets, for the sake of general scientific benefit.

Still, there are cases in Islamic Sharia where divulgence of secret is obligatory, and that's when keeping a secret results in an evil. Thus, when a man entrusts another with a secret to the effect that he will commit fornication, theft, murder or obtain a driving license despite his extremely weak eye sight, the one who is entrusted with such a secret should divulge it, for divulgence here may lead to a definite benefit, by taking precautionary measures, or if evil is already done, may help in doing something for public good. The Prophet said:

> *"Gatherings are a trust except three = one in which blood is unlawfully shed, or an impermissible sexual relation is made permissible, or a gathering where an unlawful property is unrightfully taken".*

(Fath Al Bari bi Sharh (Sahih Al Bukhari)).

A sage was asked, "How do you keep a secret?" He said, "I am its grave". It is also said, "Chests of free men are graves of secrets".

Now, I leave the issue to the reverend Ulama and the Law men to direct, advise and enlighten us how to deal with this sensitive issue.

SOME PSYCHIATRIC ISSUES AND THE NEED FOR ISLAMIC RULINGS

Dr. Durri Hassan Ezzat
Consultant, Psychiatry,
Kuwait

Modern man faces tremendous pressures that render him devoured by conflict and a prey to sufferings.

Such sufferings drive man to wrong-doings, unjust acts and deviation from the straight path shown by the teachings of our upright religion and the ethics of our cultural heritage.

Man is not all good, nor is he all evil. He is rather an amalgamation of the two conflicting elements.

The Creator knows better what He created and the nature and habitudes that He implanted, and highly exalted be He who said in His Book,

BY THE SOUL AND HIM WHO PROPORTIONED IT, AND INSPIRED IT WITH THE WICKEDNESS THEREOF AND THE PIETY THEREOF.

That means that He implanted in the soul the good and the evil, wickedness is even mentioned before piety.

However, when Allah, proportioned the soul and inspired it with the wickedness and piety, He did not just leave it prey to confusion, but He also provided it with the will and the ability to choose. Therefore, it knows well what it chooses and is responsible for its behaviour. Committing acts of wickedness is also an expected behavioural act of man, and there is nothing surprising about it.

Committing acts of disobedience is usually accompanied and followed by psychological suffering of self-reproach weighing heavily on the conscience and resulting in imbalance and lack of normality. In western communities and non-Muslim cultures, when a man commits a sin that renders him restless, his religious beliefs allow him to go to a spiritual preacher, i.e. a clergyman, and confess his sin, and consequently feels,

some comfort and regains balance and peace.

Such practice is foreign to Islam. Seeking psychiatric help is probably one of the relief outlets for the troubled soul and conscience. Thus a Muslim psychiatrist is playing an ever-growing role in serving the community and providing mental health care for modern man.

In his practice, a psychiatrist gets to know about secrets and situations and gives advice sometimes contradictory to his beliefs and code of ethics. As psychiatrists are not uncommonly compelled to give such a counselling or guidance in order to reach practical solutions or feasible treatment, they find themselves at times in need of a Sharia back-up and jurisprudence clarification in addition to the professional conscience.

The following are some examples of situations encountered by psychiatrists that need the opinion of Islamic jurists:

— A chronic alcoholic who has been treated several times by various techniques but all in vain. The destructive effect of alcohol on the body, brain and family is well known. There is a method of treatment called behavioural treatment the essence of which is to turn the liked thing repulsive. This treatment depends on getting the patient to associate alcohol drinking with what hurts and annoys instead of what he believes causes happiness and pleasure. So the patient is given the usual alcoholic drink after injecting him with an emetic, so that after a short time of drinking alcohol he starts having nausea and pain and eventually vomits. After repeating this several times the patient associates between drinking alcohol, nausea and vomiting, so alcohol becomes repulsive to him and he eventually quits drinking. This treatment gives good results especially when repeated every few months.

Now, the question is: Is it permissible for a Muslim doctor to prescribe alcohol to an alcoholic as a treatment of addiction as per the above mentioned technique when the other treatment techniques have failed to achieve any results? I beg to draw your attention to the fact that this technique is not followed in Kuwait, though widely used in western countries.

— Cases of young men who masturbate and suffer a consequent feeling of guilt, self-reproach and sometimes even depression and sinfulness and of course their circumstances don't allow them to marry and enjoy normal lawful sexual life.

What is the practical advice that a psychiatrist can give to such youths? Some of them believe they are doing a grave sin and therefore are battered by severe psychological suffering to the extent that it affects their performance at work.

— A female patient suffering from psychological symptoms; through examination the psychiatrist learns that the cause of her sufferings is her infidelity to her husband. After she leaves the examination room, her husband walks right in inquiring about the cause of his wife's condition. What is the opinion of the Sharia of what he should be told?

— A female patient is being treated from schizophrenia, which is a severe mental disease that sometimes has light symptoms hardly detectable unless by an expert, and the warning signs of this disease are not usually pleasant. It so happens that a man comes to her family proposing to her and learns later that she sees a psychiatrist. So he comes to her psychiatrist to ask about the nature of her disease, without informing her family. In such cases, the doctor is committed to the confidentiality of his patient's secret in the first place. However, at the same time, concealing the truth from a person whose interest lies in knowing it will lead him to troubles and frustrations that could be avoided were he told the truth in time, so what is the opinion here?

— A person whose job is an informer, in other words he spies on people to inform the police and trap them. Such a person, of course, acts in disguise and never tells the truth about himself.

However, due to witnessing the distress he causes others to suffer as a result of his activities, he sometimes suffers self torture which drives him to talking openly to the psychiatrist about his sufferings. We know that he cannot stop these activities because this is his occupation or because there are certain pressures imposed upon him to keep it up. What should we do with such a person? Do we warn people of him to be able to guard themselves against the danger he poses? Or shall we keep his secret, thus allowing him to continue in his evil doing?

— A person plainly says that he has committed a certain crime and insists on staying unrevealed, while the psychiatrist knows that another person is being prosecuted for this crime. Shall the doctor keep silent hoping that investigation would eventually lead to the truth without any interference on his part or should he proceed to the authorities with the information he has?

— A woman is sure that she got impregnated by someone other than her husband and wants abortion lest the baby should remind her in the future of her sin against her husband and herself. This woman has several girls from her husband, but no boys. Her husband knows of the new pregnancy and is expecting the waited for male. What is the opinion in this complicated situation?

These are some examples of the situations encountered by psychiatrists in their practice. We are, of course, doctors and have professional ethics that direct us as to what course to take in some of these situations.

However, we stand perplexed and hesitant at some of these situations to the extent that we cannot reach the opinion or advice that we consider right or nearest to what is right within the limitation of our discretion and overview of the circumstances of each case. Nevertheless, we always seek the versed opinion of Sharia and the advice of jurisprudence in order to feel confident being guided in our professional practice by the counsel of Islamic Jurisprudence.



DISCUSSION ON MEDICAL PAPERS "PROFESSIONAL CONFIDENTIALITY"



DISCUSSION

Chairman, Dr. Abdulrahman Abdullah Al-Awadi

In the beginning, I'd like to welcome you all. I am very happy to have with us in this opening session my dear brother Khalid Al-Jassar the prominent religious figure, I'd also like to welcome the Ulama who took the trouble to attend this meeting and also all distinguished brothers. Let's now start with a recitation from the Munificent Qur'an.

VERILY EVERYTHING! WE HAVE CREATED IT BY A MEASURE. AND OUR COMMANDMENT SHALL BE BUT ONE, AS THE TWINKLING OF AN EYE. AND ASSUREDLY WE HAVE DESTROYED YOUR LIKES, SO IS THERE ANY ONE WHO SHALL BE ADMONISHED? AND EVERYTHING THEY HAVE WROUGHT IS IN THE WRITS. AND EVERYTHING, SMALL AND GREAT, HAS BEEN WRITTEN DOWN. VERILY THE GODFEARING WILL BE IN GARDENS AND AMONG RIVERS. IN A GOOD SEAT, NEAR A SOVEREIGN OMNIPOTENT.

(Truthful is Allah the Great)

In the Name of Allah, I declare the First Meeting of the Symposium open.

As you know, we always try, in these symposia, to have Muslim Jurists and doctors meet together to discuss many of the issues and problems encountered by the Muslim practicing doctor who always seeks the versed opinion of Ulama.

In previous symposia, as you know, a number of specific topics were discussed. However, you'll find that the topics dealt with in this symposium are more inclusive and tackle diversified matters of concern to Muslim practicing doctors. Meetings like these invoke constructive discussions. We hope and pray to Allah to direct us to the right word and action, especially in this era in which deviant attitudes and opinions in medical practice have emerged. We're trying to be on the right path by seeking guidance and versed opinions, and it is Allah that provides guidance. A practicing doctor faces a lot of jurisprudence issues, I mean medical

issues that need jurisprudence opinion.

In our previous meetings, we used, thank God, to reach a unified viewpoint in many of the issues that were rather misty for practicing doctors in this humane profession. Therefore, we pray that, by God's will, our discussions shall be constructive, as usual, so that doctors present their medical problems and jurists respond with research and opinion, thus guiding them to the right path. It is, of course, our duty as Muslims to face what we are about to discuss of the many problems and new issues that prevail in the world of today. Therefore, I'm very happy that we're meeting today in the beginning of the debates which we hope, by God's will, shall be as calm and constructive as usual. May Allah, guide us to the truth.

We should start, as usual with the presentation of medical issues, then the viewpoints of jurists and then the discussions.

Now I give the floor to Dr. Hassan Hathout to begin with the first lecture, then we start the discussions.

Dr. Hassan Hathout

I speak for my fellow doctors, though not the best to speak on their behalf. I've noticed in what I read of their papers that they concentrate on the practical pragmatic side of the issues. This is quite normal, for they're members of a practical profession which doesn't probably allow them to catch up with theories and philosophies. The honest, God-fearing doctor seeks only what ends his perplexity in normal situations encountered in everyday practice. The following are only examples of such situations:

1. A patient suffering from a severe mental disease caused by the fear of her husband. The husband asks about the disease, should the doctor answer him openly?
2. An undercover agent with a mental disease caused by the harm he brought down on others. Should the doctor warn people of him?
3. A psychopathic confesses to his psychiatrist that he committed a crime for which another person is being prosecuted. Should the doctor report him?
4. A woman got pregnant. The doctor knows her husband is sterile. Should the doctor report her?
5. A man and a woman went to a marriage counseling clinic. One of them was found to have a defect that would prevent conception or

produce a malformation. Should the doctor inform the other party?

6. A Patient told his doctor that he commits fornication or adultry, or practices sodomy. Should he be reported?

7. The patient is a pilot and a drug addict, should the doctor report the case to authorities?

8. The patient had a pregnancy out of wedlock (i.e. illegitimate) and secretly got rid of the baby by leaving it at the entrance to a mosque, and told the doctor. Should the doctor report her?

9. A woman with a pregnancy out of wedlock. The doctor, out of piety, refused to abort the pregnancy. However, should he report her?

10. A patient with weak vision and drives a car. Should the doctor report him to authorities?

Chairman, Dr. A. A. Al-Awadi

Thank you Dr. Hassan for this summary of doctors' opinions. Now, I give the floor to the participating docotrs: Dr. Durri, Dr. Abdulrazzaq and Dr. Seddika if they have anything to add, within five minutes to the presentation of Dr. Hassan Hathout who has tried to summarize all the points. No one of the doctors of whose papers Dr. Hassan spoke is present; no one had comments. It seems that the doctors are satisfied with Dr. Hassan Hathout's presentation of the summary of their opinions. Now, the floor is open for fellow doctors to add to these points any others for jurists' opinion.

Dr. Abdullah Hussain Basalamah

Is the doctor's responsibility limited to treatment or does it go beyond that to sharing with the patient his family problems? If we limit the doctor's activities to treatment, then what Prof. Dr. Hassan Hathout has specified will be enough to cover the "Commitment to Professional Confidentiality". But if we consider that the doctor should be as interested in family problems, then we'll add a new aspect that makes the doctor have access to some secrets. This is my attitude to the issue.

Chairman, Dr. A. A. Al-Awadi

Would you like to present any other points within this frame "Professional Confidentiality" for discussion.

Dr. Ali Abdulfattah

Dr. Hassan has in fact, presented very many cases related to medical problems where the doctor get perplexed, as to whether to give information and explanation or not, especially in certain diseases. Also, in the branch of venereal diseases, a lot of embarrassment occurs, especially when the husband has been abroad and returned with an infectious veneral disease that needs treatment.

The wife starts asking when husband doesn't make love to her after his return. She asks if he has a disease, if he is under treatment, and why? We actually encounter such issues and, of course, we don't divulge the secret. But the problem lies in the husband abstaining from his wife and to what during the period of treatment.

Chairman

Thanks, Dr. Ali. Any other comments on points of interest to doctors?

Dr. Abdulmohsen Khalil

Dr. Hassan raised a question related to a driver having poor vision. Of course, a driver, before obtaining a driving license, undergoes a medical examination. Besides the problem of weak vision, there's also epilepsy. Epileptics not only endanger their lives, but the public as well. If the issuance of driving license is conditional upon having a medical examination, will this examination be confidential, or not? and since we determine whether the examined is competent or incompetent, would labelling him incompetent be considered betrayal of professional confidentiality?

Chairman, Dr. A. A. Al-Awadi

Thank you, Dr. Abdulmohsen. These are of course experiences from your field of specialization.

Dr. Essam Al-Shirbini

Dr. Hassan said that Law enumerated the cases where divulgence of secrets is permissible, which is true, but even the laws that enumerates cases cannot be all embracing. And that is why legislators, jurists and Law men never agree, and cases go to court. The logic of law is clear and agreed upon, I mean by many or rather most of us, but application is

different since there are endless examples. Therefore, doctors, law men and jurists will still hesitate when considering certain cases. I hope such example will be presented in order that we may express our opinions based on law and medical practice and correct each other. The top benefit out of such symposia is contact so as to clear up the ambiguity of urgent cases. The answer to Dr. Basalamah's question, "Is the doctor's responsibility limited only to patient?" is simple. The Law answered that question when it stipulated cases of secret divulgence, it extended the doctor's responsibility to observe the interests of wife, family and community. So, the doctor's responsibility is an extended one and goes beyond patient. Thank you.

Dr. Mokhtar Al-Mahdi

I'd like to comment on what Dr. Abdulmohsen said about medical examination and that it is enough to exclude patients with weak vision from drivers, but it is possible that a disease causing weak vision occurs during the period between medical examinations, which may take rather along period. There are other diseases, like epilepsy, which are not included in routine examinations for driving license issuance.

Dr. Hussain Al-Jazaeri

There is also a new disease, namely AIDS, which needs special study. There isn't only the necessity of divulging the secret or not to wife or husband, in case one of them has a disease and does not know, but there are also the children who go to schools. There are, in fact, a lot of issues that need to be well considered. The issue is already being considered and medical and legal disputes have started to investigate its various aspects and whether it would be considered secret divulgence or not.

Prof. Dr. Abdulaziz Kamel

I'd like to ask Prof. Dr. Hassan Hathout : are there specific cases enumerated by law for secret divulgence? And are these cases the same in all the Arab and Islamic countries? I believe that if such cases are clearly specified to the committee, we can get an idea of them and move to other cases.

Chairman, Dr. A. A. Al-Awadi

I give the floor to Dr. Hassan Hathout to answer the question of Dr. Abdulaziz Kamel.

Dr. H. Hathout

Yes, the law enumerated specific cases where we may divulge secrets, and they're almost the same in both the Kuwaiti and Egyptian laws, and in most laws. Regarding medical examinations or rather forwarding the results of medical examination to insurance companies, etc., that is included in the legal text: "If a person entrusting the doctor with secret approves divulgence to other bodies which he specifies." The patient who applies for life insurance and is sent for a medical examination, and the one who is applying for a job; of course such patients allow the doctor to forward results of medical examination to the agency sending them. Should the doctor be concerned with the treatment of the patient only or the partially relevant social and moral issues as well? I believe that the Islamic attitude which we discussed in the previous international conference is that the doctor should extend his treatment beyond dealing with the disease or the germ. We have agreed that many diseases are not to be treated by just medical drugs; doctors have to become counsellors, preachers, and even give their patients hope in the future and try to change people not by drugs only but psychologically as well. If we follow this we may be able to prevent diseases like AIDS, venereal diseases, drug addiction etc.

Dr. Ibrahim Al-Sayyad

To answer the question of our professor Dr. Abdulaziz Kamel, regarding professional confidentiality, the British Law enumerates four cases where secret divulgence is permissible:

a) at the patient's request provided that the request is made by the patient in person and not his heirs;

b) for the interest of the patient, and the British Law is, in this respect, different from the French Law which does not allow the doctor to defend his patient by divulging his secret;

c) for the interest of the doctor, if he is in a situation where he has to divulge the patients secret, i.e. if there is a dispute with the patient over the fees and the doctor has in such a case to tell that the fees are in return for such and such services;

d) the fourth case is when divulgence is made for the public interest specifically in cases of reporting births, deaths, law-specified contagious diseases and as a precautionary measure to prevent some harm occurring but not to report it in the aftermath.

Chairman, Dr. A. A. Al-Awadi

I thank Dr. Ibrahim Al-Sayyad. Now, probably, the points related to doctors and everyday problems are clear, except for the issue raised by Dr. Hussain Al-Jazaeri, the AIDS disease which probably needs to be dealt with on a wider scale. May be the responses of the reverend jurists to the raised issues will also lead to an answer to the AIDS question, especially in Muslim communities. Some other points may crop up in consequence of that, for example divorce and what may follow as a clear result. The question is: if we find a man afflicted by AIDS, do we inform his wife in order to protect her because this disease is deadly and will be communicated to her and her children, or should we not? Anyway, just to make the picture clearer for jurists, there are certain rules governing reporting of diseases.

The first rule: There are international agreements for exchange of information, reporting certain diseases and imposing reporting of certain diseases especially epidemics like small pox, cholera and other contagious diseases to the World Health Organization.

There are also certificates called "International vaccination Certificates" issued to allow one vaccinated against specific diseases free international travel. However, the disease AIDS has not yet been included in the diseases to be internationally reported, only domestic reporting is applicable.

Now, here in Kuwait, for example, according to the Law of Health Professions, the Minister of Health may include other diseases to the list of notifiable diseases.

We are of course speaking about the authorities, not any other entities. I mean reporting a patient afflicted with AIDS, if it is included on the lists of Contagious Diseases - the doctor should then report the case to the authorities; any other reporting is a different case to be dealt with under other topics. However, this law is not applicable in other countries. For example, a patient comes here from France or England, and up till now we can't report that a case of AIDS arrived in Kuwait because the International Law or the WHO has not included this disease among the ones to be reported. I hope the picture is now clear: there are diseases which we report internationally according to a present specific convention and there are other diseases to be reported according to the law.

In accordance with the Law of Health Professions including the law of Contagious Diseases, in Kuwait the Minister of Health is granted the right

to delete or add diseases to the lists, since in case of contagious diseases, epidemics in particular, the Ministry of Health is given extra authority to combat diseases including quarantine, and inspecting houses, which affect public rights to a great extend; the doctor or the Ministry of Health can enter houses and vaccinate people by force, as well as other measures. When we discuss this topic and reporting diseases we should consider this international framework, for there is no exchange of information except by virtue of an international convention or agreement.

Dr. Haitham Al-Khayyat

Mr. Chairman, we are, in fact, dealing with two words : "May" and "Shall". Is it possible to specify whether we "May" or "Shall" report information in the cases already presented. Thank you.

Chairman, Dr. A. A. Al-Awadi

You mean "May" or "Shall" from the religious point of view! Any way we are now considering "May" or "Shall". This is none of the doctors' business; the jurist Ulama will answer those questions. Probably, Dr. Hathout's handouts have specified the present problems. I give the floor to Jurists.

Dr. Abdulaziz Kamel

We've considered the international part and the part of responsibility - responsibility to the State, then the relation between the individual and some organizations, i.e. insurance companies - but we haven't yet touched on the relation between the individual and the family. I hope, when it is discussed, that we also consider the circles which affect the individual most, i.e. the individual - family relation, individual - State relation and the individuals' inter - relations.

Dr. Hussain Abduldayem

I hope when these are discussed, that we take into consideration the circumstances under which the patient tells the doctor about his disease, or the circumstances that led the doctor to have the information - for example a patient who comes to clinic alone for treatment is different from a young man and a young woman coming to clinic together for a pre marital check up to ensure their compatibility - would the fact that they came together mean an agreement on giving the information to both? Or in case a patient is sent by an insurance company for eye examination - I

believe, that all insurance companies have the patients' sign in advance an approval on medical reporting, so that's an approval obtained from the patient in person. Therefore, the circumstances under which information is attained should be taken into consideration.

Dr. A. A. Al-Awadi

Dr. Abdulaziz has raised a specific question, so we can limit the discussion to the exceptions allowing secret divulgence in the Kuwaiti and the Egyptian Laws which are four:

a) if divulgence is to the interest of husband or wife, provided that such divulgence is made to both in person;

b) if as a precautionary measure to prevent a crime, and as Dr. Ibrahim kindly explained that should happen before the crime is committed and not after. This was the second case presented by Dr. Ibrahim because if you can actually prevent a crime you may divulge the secret provided that divulgence is limited to the competent official authority;

c) to report a contagious disease, like epidemics, and divulgence in such case shall be limited to authorities specified by the Ministry of Public Health;

d) if the person entrusting the doctor with the secret approves divulgence. Now, if the Professor agrees, we don't have a problem here. We don't want to discuss these points, we have raised specific questions for the brother jurists to give their opinion on - I mean ask specific questions on the principle of "Professional Confidentiality".

For example, the questions raised around that issue of husband and wife coming to clinic and husband is found sterile due to complete deficiency in spermatozoa yet wife gets pregnant through artificial insemination, especially, the people who get pregnant abroad - what's the opinion in this case? These are certain questions: can the doctor tell the man of the nature of his disease? Should he inform the child's father of the case and that the child is not his own? We should know the opinion of the jurists, how can we have a clear cut opinion of this issue in particular?

I mean, should the doctor inform the husband, though, in fact, most of such husbands know right from the first test that they have no spermatozoa, but they accept, they'll know one way or another because those people who are deprived of children are rather special and need

special care. But what's the duty of the doctor in such a case, should the doctor inform and report that such pregnancy is illegitimate?

Dr. Badriya Al-Awadi

Mr. Chairman, in fact, regarding the rules - in the Law of 1981, Article 22/65 says "May" and this is what traps doctors into problems - leaving it optional for the doctor. It ought to be "Shall" since in practice it is the duty of the doctor to divulge the professional secrets in those four cases specified by the law.

Now in certain cases it is to the interest of the wife that the doctor informs her of a contagious or infectious disease could that be considered divulgence of professional secrets because of "May"? According to the traditions of medical practice the doctor has violated the sanctity of professional confidentiality, but does he have a choice, according to law, depending on the fact that "May" leaves it to the doctor's discretion? I believe that is wrong, because it doesn't show whether it's a duty or not, I mean the phrasing of the legal text is not sharp enough.

Dr. Muhammad Naem Yaseen

I don't think Law enumerates permissible cases only. We have among us some law specialists who are a better authority. I believe there are permissible cases as well as obligatory cases regarding reporting. As for contagious diseases, I believe when there's a contagious disease reporting is a must. But when the one entrusting the doctor with a secret approves divulgence of his secret it becomes permissible as specified. As for the topic of discussion, I have an opinion: I think no one of the medical, Sharia or Law men would disagree that the original principle is keeping secrets. I think in this symposium and the sessions set for "Professional Confidentiality" We should concentrate on finding out the exceptions to the original principle. The original principle is unquestionabe whether in the Sharia, law or logically; whether in the East or in the West - every body agrees to that. However, we noticed that some exceptions in the English Law are not in the Kuwaiti; - Those exceptions are applicable and may be observed, for it is easy to prove the original principle; but what we really need is to see the provisions for exceptions.

It would be better to establish a general rule then apply it to the cases, branches and particulars presented by fellow doctors, otherwise this whole work is going to be futile.

Answers to questions about exceptions will not be useful to anybody because the law enumerated the cases and answering particular points is not legally relevant.

However, setting a general rule and applying it to particulars, might be useful to the Law-makers themselves. In fact, the topic of this session in particular is not the direct concern of doctors as it is of medical legislators. We need to proceed from this stand point to setting rules and principles for those who will legislate or try to legislate.

Dr. Muhammad Abdul Jawad

In fact, the text of the Kuwaiti Law, which I have right here, enumerates four cases only. In my humble opinion, and I know my colleague Dr. Mostafa, Professor of Law, Kuwait Faculty of Law, I know he isn't going to agree with me, but the cases enumerated in the text are the optional cases and I agree with Dr. Badria. I believe the first three cases should be obligatory, I mean that the text should be amended to make divulgence of secrets obligatory in the first three cases, because in the first and second cases the private interest conflicts with the public interest, and I believe, within my limited knowledge, that, whether in Law or in the Islamic Sharia, when the private interest is in conflict with the public interest, the public interest takes precedence. Thus, in case of an epidemic spreading out in the country or something that would cause harm to a wife the doctor must be committed and it is his duty to report this to the competent authorities. The fourth case is probably the only one that could be optional. I hope this opinion will be considered by the committee when recommendations are made.

Dr. Muhammad Haitham Al-Khayyat

I'd like to emphasize a simple point : what is optional in law is different from what is "optional" in the Sharia, and what is obligatory in law is different from what is "obligatory" in the Sharia. We must pay attention to this fact as we speak. We are now dealing with the Sharia aspects of the issue, not the legal ones. Therefore, we should concentrate on this point in particular. The legal examples were only cited to help in reaching the provisions of Sharia. The provisions of Sharia are the point of research.

Dr. Mostafa Mansour

As a matter of fact, the technical phrasing of legal texts requires that

the text examined must read "May", because the original principle is prohibition and the exception to prohibition is option. However, if reporting in some case or another needs to be obligatory, it cannot be done in this text. It needs a different text where such cases may be enumerated; for example, "should the doctor report contagious diseases, or not?" This is a different issue that has to be dealt with in a befitting text. Whether it's a duty of the doctor in such a case or not - such issues are far from being related to this text; they should be dealt with separately according to each of the cases encountered by doctors in their practice.

In this text, however, the exceptions have to be made with the use of "May".

Dr. Hassan Al-Shazli

Would you please present all the doctors' problems to all of us first, what is included in the law second and then the jurisprudence papers presented to the conference to treat these issues one after the other, then we can make comparisons and deductions in order to reach unified opinions at the end of the session. We shouldn't present all these matters jumbled together; this is not going to clarify a lot of the issue presented by the doctors' questions, and will not lead us to the expected results. So I suggest that the doctors' problems presented here come first, and then any further fresh issues, and last a brief presentation of the Sharia papers dealing with the issues troubling the doctors and which were presented to the jurists for opinion.

Dr. Hassan Hathout

I'd like to comment on two issues : I was astonished to hear about balancing between public interest and private interest, because I'm still convinced that the option concerning secret divulgence must be by virtue of Law. I hope that the Sharia will become the Law in the near future. So we shouldn't say that we divulge a secret because the public interest takes precedence over private interest, because in our discussions, we doctors, have repeatedly mentioned the example of a woman who committed fornication and confessed to the doctor; shall we report her or not? And I heard some of the doctors say, "If you don't report her, you will be encouraging her to keep sinning and sin is catching, it will spread among people. A matter which is detrimental to the Nation and Public interest. So, some said, you must report a woman who comes to you and says that she committed fornication".

Cases have to be enumerated because following a general precept as the public and private interests may mislead in application. I'm not convinced at all that when a woman comes to me and confess that she has committed fornication my attitude towards her should be to call the police and report her.

The second issue which I'd like to touch upon is the interest of husband and wife where secret divulgence is to be made to both in person.

This is an area for Islamic ingenuity, for in order to safeguard the interest of both husband and wife, The Islamic Sharia has provided for "white lies" to mend a rift in the matrimonial lute and maintain the bond. So, if the husband has gonorrhoea, for example, and I must warn him and his wife of having intercourse, there will be nothing wrong if I told the wife that her husband has a severe inflamation in the urinary system and that sexual intercourse would severely harm him, so do not have intercourse with him. Here the Prophet, may the Blessings and Peace of Allah be upon him, recommends that man may withhold part of the general truth as long as that would help maintain the matrimonial bond. If I tell the wife that her husband has gonorrhoea, the family may probably be broken.

Chairman, Dr. A. A. Al-Awadi

Thank you. I believe, like Dr. Hassan Al-Shazli kindly suggested, instead of discussing issues in diversified directions, we have now presented several specific points. We, also, have specific questions, the legal answers to which are clear and only need the answers of Sharia. So I believe it would be better to continue presenting problems instead of generalizations which will only lead us to a legal dispute. The dispute might be useful, but it is better to specify issues then listen to the legal opinion, What the law is, is very clear; what we request is the Sharia opinion.

Dr. Abdullah Basalamah

As Dr. Hassan Hathout has kindly stated, there are three issues always encountering doctors, and the need is pressing for a decision on them. I would like, if I may, to add another issue which may be implied in the issues raised or it may be considered a separate core: If a patient requested to be medically examined, and the examination indirectly exposes the other partner, should the doctor do this examination? For

example, if a wife requests to have AIDS or gonorrhoea tests, etc.; or a husband requests sperm test to prove that he is 100% sterile which would indirectly expose his wife's sin if she gets pregnant, Should we, as doctors, help in this, or not?

Dr. Abdulaziz Kamel

With your permission, Mr. Chairman, I notice that the discussion is seesawing between two completely opposite directions, because we are moving from generalizations to examples instead of basing generalizations to examples.

During the presentation of the topic several general cases were presented : if so and so occurs, the result will be so and so. For example, as a rule Dr Hassan Hathout said that we don't want to generalize; then, it was said that we were going to deal with details. What I wish you would state clearly, is whether we are going to apply the rules to cases or doctors are going to present cases one after the other without answering them. Let them present the down-to-earth practical problems, then these problems can be discussed and codified. This way we'll be dealing with real life from which the problems emerge and from these we can reach all-embracing rules.

Chairman, Dr. A. A. Al-Awadi

In fact, I believe that as far as generalizations are concerned there is no conflict with Sharia - unless jurists think otherwise. Is the general principle of "Confidentiality" disputable? OK, let's hear jurists' opinion.

Dr. Muhammad Sayed Tantawi

In fact, the ten questions raised by Dr. Hassan, though they can be answered one by one, I believe, are all answerable by the famous rule of the Sharia established by jurists : "Do that which will cause the lesser harm." The doctor is the one who can judge which action will cause the lesser harm, of course after consulting the Ulama, the learned and the profession. The doctor can consult a jurist and a law man and with the help of their opinions he can decide which is better to keep the secret or divulge it. If the jurist and the law man advise him to keep the secret, then he should keep it; and if they advise divulgence, then he should divulge. I believe the judgement depends on the circumstances of each case; in a certain case the doctor may divulge a secret while keeping the secret

would be more appropriate in a different case.

When we read the Munificient Qur'an, we find reference to doing that which will cause the lesser harm in the story of Sayyeduna Yusuf (Joseph); his brothers said to each other,

> *SLAY JOSEPH OR CAST HIM FORTH TO SOME LAND, YOUR FATHER'S COUNTENANCE WILL BE FREE FOR YOU, AND YE SHALL BE THEREAFTER A PEOPLE FAVOURED.*
>
> *(S12:V9)*

So, the brothers chose the lesser harm which is to cast Yusuf into the bottom of a well. This proves that the Judgement will differ from one case to another depending on the circumstances and means and that the doctor should consult the learned and the Ulama, then when he is satisfied that divulgence of secret is better, he divulges; or if he is satisfied that keeping the secret is better then he keeps it, all within the framework of the rules set by the Islamic Sharia and the established opinions of law men.

Mr. Khaled Ahmed Al-Jassar

As far as "Confidentiality" is concerned, there is no conflict between Law and Sharia. However, what Law considers is : since medical practice is a profession that is entrusted with countless secrets, should doctors be allowed to divulge these secrets? And what are the consequences of such divulgence in the community, considering that doctor is assumed to be a constructive agent in the community, not a destructive one? Causing separation, for example; in the Islamic Sharia, the public interest takes precedence, preventing harm is obligatory, averting evil takes precedence over achieving interests. Considering that these are the provisions of the Sharia, we can safely say that there is no conflict as far as "Confidentiality" is concerned - that's indisputable.

The question now is : Does Sharia allow doctors to divulge secrets in cases where Law prohibits, considering the consequent harm to the community? This the respected Ulama will answer.

The issues raised by Dr. Hassan Hathout are what is really important because doctors stand perplexed at them - Law prevents them from divulging secrets, while their conscience senses a severe harm in keeping those secrets. The harm may be inflicted on husband and wife or may extend beyond them. This is what we really need now, if you please Mr. Chairman, doctors are really perplexed when facing the cases Dr. Hassan

Hathout presented and do not know the provisions nor the attitude of Islam. This is what we want to know, then the attitude of Islamic Sharia towards those issues raised by Dr. Hathout.

Especially the new extremely dangerous diseases; are they covered by conventional law and therefore doctors cannot inform about them? Or are they not covered by law since the law only covers the diseases known at the time it was made and this disease was not discovered until after that law was passed? There are now new dangerous diseases, discovered just recently - should the doctor still keep the secret about such dangerous diseases? Like the case presented earlier by Dr. Hassan Hathout : a husband was examined and found afflicted with AIDS. Do we tell the wife to stay away and have no intercourse with him or keep silent? We'd like to hear an answer to this question from our virtuous Ulama with our thanks and may Allah bless them.

Dr. Omar Suliman Al-Ashqar

As many have said, secrets, according to Islamic Sharia, are to be kept, and that is a general rule. However, when a certain problem is to be considered, it should be considered in the light of all the texts and rules of the Sharia. Let me give an example : backbiting is prohibited -

> *WOULD ANY OF YOU LOVE TO EAT THE FLESH OF HIS DEAD BROTHER? YE DETEST THAT.*

However, the Ulama made six exceptions where they considered backbiting permissible by virtue of other texts or rules of the Sharia : if someone is going to marry his daughter to a certain man and asks for my advice, I may tell him not to marry his daughter to that man if he is not a good man; if there's someone who wants to share Mr so and so in his trade, I would tell him not to share that man because he's no good or he's incompetent in trade. The texts of Islamic Sharia should be considered as One Whole Unit. I believe, fellow doctors were overwhelmed by the so called sacredness of professional confidentiality and the sacredness of texts. In fact, all the Sharia texts are sacred including the particulars related to secret keeping. All the other texts are also sacred including those that provide for exceptions from particular texts. This rule is also sacred and the all embracing rules which are deduced from the entirety of the texts are equally sacred for their conclusions are Sharia provisions.

When an issue is being considered, it must be considered as an integral whole. In other words, when Ulama of the Sharia consider a

certain case, they don't only consider what Allah ordered us to do, they also have to consider exceptions established by the Sharia, if any. What happens if a citizen of an Islamic state is entrusted with a secret that would cause the state to collapse or lead to the death of hundreds of people, not necessary in the field of medicine, in any other field; then discretion is used. There's no doubt that the rules set by jurists are applicable here : the public harm, the private harm, the severe, the lesser, all these should be taken into consideration. So, the chair has shed some light on particulars.

In the first case where a man rapes his daughter or sister and she gets pregnant. There is no doubt that Islam prohibits fornication and incest is of a stronger degree of prohibition. However, in this particular case, the Law-maker doesn't allow the doctor to report because Sharia does not accept reporting fornication unless made by confession or by four eye-witnesses. Considering the case from the Sharia perspective not the legal perspective which is probably different, if the doctor reports, in an Islamic State, and the woman denied, he will be charged with "Slander". If the woman reports, that's a different story. This is one side; of course, I'm speaking about fornication in general whether incest or otherwise. Abortion, is it permissible to kill the embryo? The Islamic Sharia considers incest a graver sin than fornication or adultry but it doesn't permit killing the fruit of this sin regardless of its being of a relative at a degree of consanguinity precluding marriage or otherwise as fornication is prohibited in Islamic Communities, and when a woman from Al-Ghamdi tribe came to the Messenger, may the Blessings and Peace of Allah be upon him, and told him that she was illegitimately pregnant, he ordered her to stay until she was delivered, breastfed and weaned her baby, then he ordered her stoned to death and let the baby live. The possibility that the illegitimate embryo may be malformed is a different issue. I don't think I'm dealing with this case at length. If it's deformed before it's old so what? How many a case do we encounter in which there are deformed people with abilities and capabilities; he could even become a genius. Deformity doesn't always render man a failure.

Second issue : the case of a man who has no spermatozoa. I believe this is a man who came to know the truth, so when I inform him of the truth, regardless of the consequences, I'll inform him that he has no spermatozoa, I won't be accusing his wife, I'll only tell him a laboratory fact - that he is sterile. Whatever consequences follow this fact is none of my business, it is his own business; his attitude towards his wife, according to the Islamic Sharia, if he doesn't accept what the doctor tells him or if he wants

to investigate the matter further. There are provisions for this case in the Islamic Sharia, for example, disavowal of paternity by mutual oath of both spouses. In the case of a couple who agree together on having a premarital examination to check their compatibility, as long as they came willingly and each of them permitted the other to get the information then there is no secret divulgence involved because that's what they originally came for.

Now, number 3 : an alcoholic pilot. The lives of hundreds of people are more important than the life of one man. No sane person could say that we keep the secret in the interest of one man and endanger the lives of hundreds who will fly with that pilot. The example here is very clear and we can apply the rules here: The private harm and public harm, the lesser harm and the severer harm. The issue here is very clear; there's a grave evil. Were it a private harm, driving his own car or flying his own plane, were the harm limited to himself, in other words, we could stop there and not report. But since he is a pilot who sometimes flies two or three hundred passengers, we can't keep his secret. I believe that's indisputable.

The fourth example : a patient who secretly practices fornication or sodomy. This, as I mentioned earlier, is not to be proven, in the Islamic Sharia, by mere reporting and the person who reports will probably be punished for "Slander" with eighty lashes. So, you should keep silent in such cases, otherwise you would be punished according to the Islamic Law or Sharia.

The last example, I have here, is that of a doctor who learns that a patient left her illegitimate baby in the street or some where else. I believe this case is not limited to doctors, for whether I or any body else learn about that, the judgement is the same, but I'll have to prove that it's her baby for any report is not acceptable without proof.

Chairman, Dr. A. A. Al-Awadi

I believe, regarding the comments of Dr. Omar, we will of course, present the jurisprudence papers and the answers to those questions in the evening session. I was hoping that doctors would add other points or questions. In the evening session we will discuss the topic within the framework of the jurisprudence opinions presented in the papers presented. Any other questions? Now we have specific points, questions and two more questions raised by Dr. Hussain Al-Jazaeri and Dr. Abdullah Basalamah. Do you have any other specific questions? Because in the

evening we will listen to the opinions of the jurists, discuss them and reach specific answers to the questions raised.

Sheikh Ezzuddeen Al-Khateeb Al-Tamimi

As jurists listened to the questions of doctors, I hope doctors will present the text of the Hippocratic oath so that we can give the Sharia judgement on that oath.

Chairman, Dr. A. A. Al-Awadi

Dr. Ezzuddeen, we don't have the Hippocratic oath we have a special oath issued by the Islamic Organisation for Medical Sciences and that is the oath we take now. We can provide you with a copy of it in the evening; it is derived from our Sharia.

Dr. Essam Al-Shirbini

Would you please, Mr Chairman, assign us some time to give examples and present specific cases after the presentation of the jurisprudence researches. For even with our knowledge of the law and reading what we can of the Sharia, every doctor still faces cases that make him perplexed. When law says "to the interest of husband or wife" the estimation of "interest" differs from one person to another, and likewise the doctor hesitates in determining the public and private interests. Therefore, I hope you would announce the time assigned for examples and cases after the jurisprudence researches.

Second the way to consider any one case might differ depending on the time and circumstances of its occurrence. For example, what Dr. Hussain Al-Jazaeri mentioned : Law says, "secret may be divulged if to report a contagious disease"; it is absolutely different to be afflicted with malaria or small pox from being afflicted with AIDS. Therefore, the door must be opened for discussion of such issues after the jurisprudence researches have been presented.

Chairman, Dr. A. A. Al-Awadi

I believe we have come to the end of the session because I don't see any new questions raised by the doctors other than the ones already presented as well as the two asked by Dr. Hussain Al-Jazaeri and Dr. Abdullah Basalamah.

Also, in the evening, if jurists would like to respond to the items listed in the papers and whether the Sharia agrees with the four exceptions in the articles presented earlier, or not?

Secondly, the exceptions stipulated in the Kuwaiti Law are almost general exceptions, are they also accepted by the Ulama according to their concept of Sharia? Then we start with the specific points presented in the questions. We'll first discuss confidentiality in general and the opinion about the exceptions stipulated in the Kuwaiti Law which authorize doctors to divulge secrets. Also the issue of option and obligation of secret divulgence.

Then, thirdly, we answer the specific questions raised in this session. Dr. Omar has kindly presented his point of view but we'd also like to hear the opinion of the other jurists after listening to the jurisprudence papers, at 4:00 p.m. Do doctors have any more questions?

Dr. Kamal Fahmi Abdulqader

In fact, most of the cases encountered by doctors have been included in the papers presented today, but I'm a gynaecologist and obstetrician and sometimes girls or young women who work as maids come to me, having been raped or at the beginning of pregnancy, etc. The girl is sometimes underage, and sometimes of age, and they request not to tell the lady of the house who usually accompanied them. This is an issue that we'd like to ask about because the lady, for whom that maid works, and her husband are directly and completely responsible for her. If anything happens to this girl, the lady, will definitely be liable to legal action assumed by the family of the girl since she and her husband are in charge of the girl.

Dr. Hussain Al-Jazaeri

Since we talked today about secret divulgence to husband and wife for protection and the issue of AIDS also cropped up, I'd like to explain that secret divulgence in the case of AIDS is not only for protection but for diagnosis, for the wife herself might have become a carrier of the microbe but is still at a stage where the symptoms do not appear - they might start appearing after 1 year, 2, 3 or even 10 years. What complicates the AIDS issue is that it is not yet included in the diseases internationally or locally notifiable. This might probably lead to, like what happened in the days of diphtheria, searching houses and examining the people living with the patient to decide who of them is carrying the microbe, if any.

Dr. Ahmad Shawqi Ibrahim

The doctor is answerable to conventional law, though these issues should be viewed from an Islamic Sharia perspective as well as a legal perspective; and the view of the Sharia might conflict with the view of the law. Here I get lost, answerable to my Lord, and answerable to law, according to which I could be tried. I hope jurists and law men will come to an agreement, and if there is conflict between law and Islamic Sharia there should be a recommendation to amend the items or articles in the law which are conflicting with Sharia.

Chairman, Dr. A. A. Al-Awadi

In fact, doctor, the whole symposium is about this issue and we're going to explain all these problems.

Sheikh Abdulrahman Abdul Khaliq

I'd like to add one thing to what Dr. Omar Al-Ashqar has kindly explained : he limited the proof of fornication to confession and witnesses. In fact pregnancy is also a proof of fornication. Dr. Omar said that a doctor shouldn't report fornication otherwise he would be liable to punishment according to Sharia, which is true; but he can report the pregnancy which occurs in the absence of a marriage contract and, of course consummation of marriage. Jurists, of course, have disputes about whether the marriage contract is enough? However, what is held sound by the schools of Muslim jurists is that a marriage contract is not enough and consummation must be proveed. For example, if a man married a woman and travelled right after contracting the marriage and after three or four years the woman got pregnant, though her husband is still away, what is indisputably right as derived from the views of the scholars is that the baby is not to be attributed to the husband if he disavows it. After all, pregnancy is an evidence of fornication and consequently if a doctor reports it, he won't be liable to punishment.

Dr. Tawfiq Al Wa'i

This is not a question - I'd like, in fact, to review the order of the evening session because there will be presentations of the jurisprudence researches then discussions, and there must be conditions, and the questions and issues raised by doctors need to be packaged in a way that would facilitate jurisprudence explanations and giving answers and to be able to state the Sharia provisions for those issues. The order of the

session is all yours, but I'd like the jurisprudence researches presented first, then answers and discussions, then decisions as Dr. Hassan and other fellows have requested earlier.

Dr. Ibrahim Al-Sayyad

Certain countries e.g. all the Eastern Bloc. oblige patients suffering from venereal disease to inform the other partner whom he had intercourse with otherwise he'd be incriminated, for withholding testimony. Is this allowable in Islam.

Chairman, Dr. A. A. Al-Awadi

Ibrahim always asks difficult questions. Anyway, we hope, as Dr. Hassan Hathout pointed out, to answer all the questions, after listening to jurists in the evening. We'd also like to hear their opinion on the present general law and the items presented. We'll specify the questions and all the other issues raised in order to reach clear-cut answers. Do we all agree to this? Then, with God's will, this meeting is adjourned to 4:30 p.m. this evening.

SECOND : FIQH PAPERS

— The Doctor Between Disclosure and Withholding
His Eminence Sheikh M. A. Al-Salami

— Secret Disclosure in Islamic Sharia
Dr. M. S. Al-Ashqar

— Legal Consequence for A Doctor Disclosing Confidence for Public Good in Islamic Sharia
Dr. H. Al-Shazli

— Legal Consequence for Secret-Disclosure in Islam
Dr. T. Al-Wa'i



THE DOCTOR BETWEEN DISCLOSURE AND WITHHOLDING

His Eminence Sheikh Muhammad
Al-Mokhtar Al-Salami
Mufti of The Tunisian Republic

Whatever the nature of work or domain of human activity in which he exerts an effort, the Muslim finds himself duly taken care of, and the path to follow carefully defined for him by Divine Legislation through expounding what is impermissible for, enjoined on or allowed to him. This is honor given to Man, for the Lord of the Universe in His Divine providence has by no means brought him into being purposelessly; rather He has paved the way for him to elevate and purify himself, and, most sagaciously, reconciled between his entity as an individual and social life in a way that enables him to succeed as a viceroy in the universe and populator of the Earth.

The more noble and respectable man's work is, the greater his responsibility becomes, and, consequently, the more perfect is the accuracy in assessing his acts. Hence, the provisions that govern the individual when dealing with the earth and inanimate objects number less than those governing him in relation to animals, and the latter, in turn, are not comparable with those determing his actions when related to man.

Since medicine is concerned with man's body and his physical and psychological equilibrium, with the aim of having it protected from, preserved and defended against whatever imbalances that may befall, the responsibility of the doctor is consequently intricate, exactly as his work is, especially when bearing in mind the fact that he has access, by virtue of the profession, to what anyone else does not. Private parts and/or weak spots of whoever is physically or psychologically examined are exclusively revealed to him, and secrets kept concealed in the inner recesses of selves or under shielding, clothes are disintened before him. Particularily as far as the psychological aspect is concerned, muftis and lawyers have the same access as doctors. This includes many spheres and various

shapes; and, I believe, it is advisable that doctors keep a record in every clinic or hospital to have the problems they are counselled about duly registered for the purpose of study, thus enriching Islamic Jurisprudence on the one hand and widening the scope of religiously acceptable solutions that are brought forward and which might help relieve the doctor of a nagging issue or of uneasiness of conscience on the other.

The blessed meeting of ours is, I hope, a first step to be followed by more efforts on both the individual and collective levels. The State of Kuwait is most appreciatedly and admirably felicitated on ever taking the initiative in every matter. And an unaffected appreciation and renewed reverence are due to those erudite selection of doctors in this noble country, who honour the Pan-Arab and Islamic Nation; being unsatisfied by the success scored in scientific fields, they endeavoured to find clear-cut answers for the intricate predicaments that haunt the believer's scrupulous and living conscience.

The Doctor and Examination

A strong innate instinct in man, that represents the corner stone in what mankind has so far attained of scientific achievement, is the instinct of curiosity. Many an opportunity are given to man to probe the unknown either through sense or thought. The more related the challenge is to a masked secret, the stronger the intrinsic will power to tear off those knowledge-barring masks. Both civil education and religion enlightment regulate this instinct, in its unchecked form for serving the well being of man and, at the same time, to appease his avidity without harming others.

Yet, the religious criterion, in this connection, differs from the civil, in that the latter restricts the right to revelation of secrets only to desire of the owner, so, if such right is waived, then the senses of the party informed are at liberty to explre whatever he wishes to know, be it the self's latent depths or the body's private parts. But, according to the Islamic criterion the rights of the one to whom a secret belongs are confined to what is permitted by the Sharia. Hence, it is not permissible for a Muslim doctor to go beyond the part in need of examination just for the sake of satisfying a certain desire that is not really justifiable by what the examination requires for diagnosing the illness and prescribing treatment.

Yet, making a clear-cut definition for each of such cases is not practically possible. It is, therefore, imperative to control this all-embracing rule which represents a delicate balancing between scientific requirement

to diagnose illnesses and the parts and circles to be viewed or the private secrets to be uncovered. Anything beyond that should not be unveiled by the doctor nor should he try to elicit from the one he examines any private secrets. If, for instance, a sinning girl asks the doctor to examine her to see whether she is pregnant or not; any questions asked by the doctor in excess of what is professionally needed, in order to know, say, her lover, the extent of her love for him, the number of times they had coitus or the place where they did so, and such questions that are not essential to determine pregnancy would be a kind of spying that is prohibited by Allah, as it is stated in Surat Alhujurat (Appointments)

AND ESPY NOT.

The prohibited spying is the act of searching for what is withheld from you. Qurtubi related on the authority of Abdulrahman Ibn Oaf, may Allah be pleased with him, "One night I went out with Omar Ibn Al-Khattab, may Allah be pleased with him, touring Al-Madina when we sighted a lamplight in a house whose facing door shut off some people with loud voices and clamour. "This is the house of Rabi'a Ibn Umayya Ibn Khalaf, and they are now drinking; what do you think?" Asked Omar, may Allah be pleased with him, I said "I think we have done what is prohibited by Allah; He said, highly glorified be He, (And espy not), but we have spied, upon which Omar turned away and left them".

Omar was responsible for good statesmanship and for enforcing Allah's Law : hence he thought of exploring what was going on in that house when the clamorous and discordant voices made him doubt. Yet, Abdulrahman Ibn Oaf reminded him of the above verse and of the fact that Allah had not assigned him to hunt down other people's secrets at their very door steps; rather He entrusted him with the responsibility of letting the word of Allah have the upper hand in governing the Muslim Nation and an over stepper was he if he did so in something secret. So, he did not break the contract in accordance with which the community had agreed to live, nor did he offend anyone. The doctor, likewise, is not permitted to uncover the bosom, breasts or the back unwarantedly. Rather, he should demand of the immoral female patient to respect him and not to uncover what he should not see. Indecisiveness in this matter has, in many cases, caused ruin for some families, led to estrangement of spouses, rampant acts of adultery and many a social scandal.

The Doctor, Treatment And Information

The issues, conditions and cases that come to doctors do greatly

differ. Some, however, are simple in respect of diagnosis, treatment and judgement of Islam, and some are intricate as far as professional fundamentals are concerned, wherein I have nothing to say except that the doctor is to blame. If he fails to do his duty; or, perhaps, in so much as the doctor's peace of mind is concerned as whether what he is doing will please Allah or arouse His wrath. The issue may be complicated to the extent that the good and the evil and matters prohibited and those permitted become mixed up.

The point is not just connected with man's profession, so that we could say "So, whoever saves himself from these suspicious things saves his religion and his honour", but it is far more delicate; it reflects the relation between a human being in an unsound condition asking for the help of one who, if Allah so will, is able to restore his soundness. Moreover, one or more parties are offended in this. It is not possible, therefore, to draw up an automatically applicable rule for some issues; rather each issue should be separately studied along with similar cases.

Sex Issues

Sex issues might be the most intricate ones by which the Muslim doctor is tried as a human being whilst he uncovers what is not usually uncovered except by husbands. And since it is the right of either party of a married couple to really know the other, and the doctor is the one to whom the truth is revealed, and, yet, is requested by the party examined not to disclose it to the other spouse, the attitude of a doctor, who is endowed with a scrupulous conscience and a good faithful soul turns oitical with nagging questions haunting their good inner depths so that interests conflicts whenever subjected to discretion. The fundamental rule is, perhaps, that the doctor should not impart to any one whatever information he obtains by virtue of the profession.

The reference for this rule is the Hadith related by Muslim on the authority of Abu Said Al-Khudri that the Messenger of Allah, may Allah's blessings and peace by upon him, said:

> *"The most wicked among the people in the eye of Allah on the day of Judgement is the man who goes to his wife and she comes to him, and then he divulges their secret".*
>
> (IKMAL AL-IKMAL VOL. 4, P. 62).

Ahmad and Abu-Dawud related,

"The most important of the trusts in the sight of Allah on the Day of Judgement is....."

(Vol. 3, p. 69).

1. Virginity Problems:

A girl loses her virginity or is born without a hymen, then she and her family ask the doctor to perform hymenorrhaphy and make the hymen seem intact for whoever will marry her; should the doctor undertake such an operation to save the girl's honour, preserve her future from being ruined and, eventually, prevent telltale talk within the family? or should he refrain from doing so in order not to take part in cheating her would-be husband on the grounds that he has chosen to marry a virgin, and the one so chooses should, justifiably, be respected in his choice and not defrauded.

Jurists Standpoint

Jurists see that if a man marries a virgin then discovers that her hymen is lost this is deemed a defect entitling husband to repudiate marriage and take back the sum of money settled upon the wife "Mahr". Ibn Asem says: And should the husband not find her maiden he is not to repudiate save by stipulating a virgin so long as her hymen has been removed by coitus kept secret, repudiation is permissible.

Here he is following the technical differentiation in his time between maiden "bikr" and virgin "azra": "Maiden is a female who has not yet entered into a contract of marriage, whereas virgin is the one who has the seal of her Lord", i.e. hymen, intact. The ruling on the above case is maintained if the woman admits her husband's claim, but if she denies 'he owes her nothing' Ibn Arafa was quoted 'save to ask an oath of condemnation to be taken by her, if she is responsible for herself, or by her father if she is in his custody'. 'She is not to be examined by women, nor should a freeborn be uncovered in such a case' maintained Ibn Habib (Mayyara, Vol. 1, p. 215).

Al-Tawdi says. "The opinion maintained by Sahnoun, in other than "Al-Mudawana", that "she can be examined by women at command of the ruler has been followed". This is, also, the opinion adopted by Abuhanifa : that one woman or two better examine her rather than she urinates against a wall, or the smallest egg be inserted into her vulva" Ibn Abdeen, Vol. 2, p. 596.

Al Qabsi contends that non-existence of hymen does not justify repudiation, for it is removable by means of sexual intercourse as well as

by other factors. In his "Nawazil" Ibn Hilal enumerated five causes that can lead to disappearance of hymen "A young girl might become deflowered owing to five factors; either by a leap, lifting a heavy thing, riding an unsaddled donkey, falling off a wall or a tree and the like, or by being born in Muharram."

This question is contained in "Sharh Al-Wadiha". Unquote. (Al-Mahdi's annotation - Book 16, p. 4, vol. 2). "Hymen may be lost on account of repeated menstruation" Mayyara further suggested.

The opinion widely acceptable and known is that if husband makes virginity a condition, or if he does with his wife what is usually done with virgins (have a brush with her and does not find her virgin, he is then entitled to repudiate marriage and take back the "mahr" if he finds her not virgin, whether he hymen was lost owing to fornication or due to another factor, for it is a right related to a legitimate purpose and for acquisition of which money has been expended.

Here jurists ascertain that should the husband find her not virgin he is not to accuse her of fornication, for such an accusation is punishable by what is stipulated in the Qur'an. If he says, "I have found her deflowered", the provision for slander is then applicable to him. They have also urged the one in charge of the girl whose hymen has been lost without sexual intercourse to have a document made which will help free her, as well as her family, of a future disgrace. Mayyara says "In this connection I have come across a document handwritten by Al-Hassen Ibn Othman Ibn Attiya Al-Tijani, known as Al-Wansharisi, with its edges time-worn. The part that escaped damage ran as follows: "This instrument is a safeguard against misgivings that may arise around so-and-so, the little daughter of so-and-so is in charge of her and her legal administrator, know that she has fallen victim to the inexorable fate. She was walking like young boys do and playing the manner her young playmates did and whilst doing so she fell on a piece of rock that hit her womb causing her hymen to be lost. And I, the undersigned after giving the date, know that she is too young to attract men sexually. So, her minority is sufficient evidence to repel any suspicion.

Hence, whoever intends to marry her should do so in good spirits, with his mind set at rest, assured that he will unveil the shield that has never been lifted to satiate a desire, and that she is a pure virgin whom before him hath been deflowered by neither man nor jinn. He who testifies to the contents of this document truly knows the minority of the girl in

question" (Mayara's commentary Vol. 1 p. 216).

Legal Consequence for a Doctor Performing Hymenorrhaphy

It might be deemed acceptable in my opinion that for the girl who loses her virginity at an early age so that the doctor can definitely say that the cause is not sexual intercourse for she was not capable of that, only in this case he is permitted to perform hymenorrhaphy. Still, in any other case he is not to undertake such an operation, except in the presence of the husband and when the latter so wishes, for the right is his. And in any case whether he performs hymenorrhaphy or not, it is prohibited for him to divulge what he has learned by virtue of profession.

2. Sterility:

If the doctor knows, on examining a husband, beyond any doubt that he is definitely incurably sterile, then is, later on visited by the wife accompanied by her husband and discovers that she is pregnant; should he tell the husband that he has definitely no hand in that gestation?

Jurists have dealt with this matter and unanimously agreed that sterility is not necessarily a sufficient reason for repudiating fatherhood of foetus. Hanafites have adopted, even more an extreme attitude.

In "Al-Dur Al-Mukhtar" it is written "..and they deemed it sufficient proof of cohabitation without consummation the marriage of a man in the West to a woman in the East, and though they are separated by a distance that is covered in a year, she gives birth only after six months of marriage, Vol. 2. p. 630." It is also mentioned that "Attribution of kinship is based on what is not known in order to avoid contradiction" Vol. 4, p. 444.

Therefore, the doctor should not raise the husband's doubts, nor should he accuse the woman. Were Islamic penal codes applied nowadays, the ruler would be obliged to have the doubt-raising doctor flogged eighty lashes, declare him as legally ineligible and deem his testimony rejected in exoneration of the woman and so as to preserve the matrimonial bond.

The indisputably inrefutable basis for this is the Hadith related by the "Sahihists" here by Al-Bukhari : On the authority of Urwa Ibn Al-Zubair, narrated, Aisha, may Allah be pleased with her,

> *"Utba Ibn Abi Waqqas took firm promise from his brother Saad Ibn Abi Waqqas to take the son of the slave-girl of Zam'a into his custody as he was his (i.e. Utba's) son".*

"In the year of the conquest (of Mecca) Saad Ibn Abi Waqqas took him, and said that he was his brother's son, and his brother took a promise from him to that effect. "Abd Ibn Zam'a got up and said, "He is my brother and the son of the slave-girl of my father and was born on my father's bed." Allah's Messenger, may the blessings and peace of Allah be upon him, said, "The boy is for you, O Abd Ibn Zam'a" Then the Prophet, may the blessings & peace of Allah be upon him, said., "the son is for the bed (i.e. the man on whose bed he was born) and stones (disappointment and deprivation) for the one who has done illegal sexual intercourse." The Prophet told his wife Souda bint Zam'a to screen herself from that boy as he noticed a similarity between the boy and Utba. So, the boy did not see her till he died".

(Fathulbari Vol. 5, p. 197).

So, whenever a child is born to a husband whilst marriage is still binding, the child is attributed to him, and the kinship is never repudiated unless the husband takes the li'an oath, i.e. disavowal of paternity by mutual oath of both spouses in accordance with the prescribed conditions and rules, or if witnesses to an act of adultery were provided according to fundamentals within which testimony is acceptable.

Pre-engagement Examination

If the engaged couple go to a doctor in order to have themselves medically checked up to know whether they physically match and marriage will not result in deformed or retarded children, then the examination shows they do not match; should the injured party be informed, or does professional confidentiality oblige him not to disclose results of the examination?

The doctor should, undoubtedly, reveal the ill fact he has discovered, for the couple have come to see him about the family they are going to raise, which is their main object, and whether it will be a healthy one. Al-Qurtubi says "Backbiting is permissible if speaking about one in ill terms, will serve a good purpose; as when the Prophet, may Allah's blessings and peace be upon him, told Fatima Bint Qais when she sought his counsel about Mu'awiya and Abu'Jahm Ibn Huthaifa who had both sent proposal of marriage.

"As for Mu'awiya, he is a poor man, having no property, and as for Abu-Jahm, he does not put down his staff from his shoulder (i.e. he was in the habbit of beating women)".

(Ahkam Al-Qur'an Vol. 16, p. 340).

The Messenger of Allah, may Allah's blessings and peace be upon him, knowing the standing of Fatima bint Qais,

"She had beauty, brains and integrity of character and what proves her social position is the fact that, the Shura men, when Omar [Ibn Al-Khattab, may Allah be pleased with him, was assassinated, held a meeting in her house"

(Al-Istiy'ab Vol. 4, p. 383) acquainted her with shortcomings of those who proposed to marry her. "And the Messenger of Allah ever sets good examples to follow for him who hopeth in Allah and the last Day". But, suppose the party who was proven to be sound accepted the other who was defective and the doctor is sure that defectiveness of progeny is highly propable; should he in this case report the matter to the authorities? What I can safely maintain is that it is not permissible for him to do so, except if the applicable legislation provides for such reporting; and if the matter is so, I would like to put forward an opinion for jurists to consider : the doctor must inform the person in authority, because such legislation is not detrimental to a lawful interest, is not in contradiction with proven prescribed texts, and does serve a common interest.

Hippie Disease - or AIDS

This deadly disease, which increasingly threatens mankind through destroying immunity of the body, is a result of immoral sexual relations. It spreads by means of blood transfusion when the blood of a carrier is given a patient free from the disease, or by sexual intercourse or through the mouth. It is one of a few diseases for which medicine has not yet found either a vaccine or a decisively curing drug. Professor Lock Montaigne, discoverer of the virus, who managed to separate it in January, 1983 and, at first, named it Lymphopathy Associated Virus (LAV), then Human Immuniodeficiency virus 9HIVO, ascertains that so far there is no treatment that can cure the disease, and all that could be done is to delay its effect on the patient's life.

This disease is divided into two stages:

The first is when the human body is invaded by the virus. At this stage

testing shows positive results, whereas the painful fact is that the disease is there, but with no symptoms or signs. Medicine is still looking, so far unsuccessfully, for a way to ensure that the attack does not develop into quite a tractable disease.

The second stage begins when the virus dominates the victim's body and starts to rip the cells, thus depriving the patient of vital immunity.

Now, should the doctor, upon detecting the disease at any of the two stages, tell the patient the truth? Second, should he tell the husband when his wife is afflicted with the disease, and vice versa? Should he inform the local authorities? Third, I think the doctor is entitled, it is even his duty, to inform the patient so that he can be aware of the hazard he causes when donating blood or having sex with a healthy person, man or woman. He should also tell the patient's spouse about his or her condition. Informing authorities is effected in either of two manners : First reporting the case without disclosing the patient's name - and this must be done so that the state can draw plans on the basis of data provided by doctors and treatment and analysis centres, especially that this disease has never been taken into account when drawing previous plans, and that it ever keeps spreading the proliferating leaving horror and dismay in its wake. A report, issued on January 31, 1987, by World Health Organization stated that the number of AIDS patients in the world amounts to 39144, and the number of those whose bodies host the virus, i.e., carriers, ranges from five to ten millions, and that the rate at which the disease kept spreading during the last months calls for panic. In the European Economic Community the rate doubles every nine months.

As for informing authorities about the name of the patient, and having his civil status registered, without there being a binding rule for that, here I see no reason for the doctor to disclose the secret. However, the patient should, on no account, be accused of adultery or of being a homosexual, for the virus may transfer by means of intravenous injection, contaminated hypodermics or by any other means not yet discovered.

Cancer

Cancer is a malignant disease that plays havoc with cells and negatively affects growth and reproduction, and though doctors are striving to overcome it, day by day, spreading the disease is assessed according to the level it has developed inside the body; it might not have developed to the extent of being out of control. If detected at this stage, it is curable; yet, recurrence of the disease remains possible. Informing the

patient with the truth depends on whether he relies on Allah and has confidence in Him, and whether his love for life is not so fervent to the point of being panic - stricken when his life is threatened. If that is the case, then, there is no objection to informing him about the nature of his condition so that he can accordingly plan for his future. But if he is weak-willed and cowardly and is likely to have a nervous breakdown if informed, then he should definitely not be told. Medical schools, to the best of my knowledge, have been following two courses of action; the French school does not disclose the disease to the patient whereas the American faces him with the fact. What I was told might be wrong; so I recount it with full reserve. Whatever the case is, there seems to be no reason why the doctor should not tell the patient about his health condition and the risks of deterionation of the disease, whenever he is psychologically normal and has no weaknesses, though I am confident that what is provided by doctors of data about the effect of disclosure and withholding is deemed one of the important pillars in formulating the legal consequence of Sharia, and Allah knows best.

SECRET DISCLOSURE IN ISLAMIC SHARIA

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Linguistically a "Secret" is that which is kept hidden, and likewise, the "Secret thought" Allah, highly exalted be He says,

ON A DAY WHEREON SECRETS (I.E. SECRET THOUGHTS) SHALL BE OUT

(S86:V9)

that is on the Day of Judgement. Secrets, which are what one keeps in the heart, of intentions, beliefs, etc., shall be exposed, unveiled, and those which are good shall be known and those which are evil shall be known.

One says "I confided a secret to someone" or I told him something confidentially" when you let him know your secret. In Arabic the "secrets" of the palm, are the lines on it.

In Surat Taha - 7

HE KNOWETH THE SECRET AND THE MOST HIDDEN

(S20:V7)

the word "secret" means that which is told to someone by way of "confidence, and that which is "most hidden" (of secret) is what one tells himself and thinks of without imparting it to another, which is also a sort of secret, yet, it is the most hidden of all secrets.

"Divulgence" of secret is "telling" and "making it known", the opposite of which is "keeping" and "withholding" and anything that is disclosed "spreads" like ink on a thin paper, and in Arabic the cattle "fashat, literally "spread" to graze, and "al-sa'ima" that is the animal grazing wherever it likes, it called "al-fashia" that is "the spreading one".

Some forms of withholding and divulgence in The Book, The Sunna and The Tradition of The Righteous.

In Surat Al-Tahreem,

AND RECALL WHAT TIME THE PROPHET CONFIDED A STORY UNTO ONE OF HIS SPOUSES, THEN SHE DISCLOSED IT, AND ALLAH APPRISED HIM THEREOF, HE MADE KNOWN PART THEREOF AND WITHHELD PART. THEN, WHEN HE HAD APPRISED HER OF IT, SHE SAID: WHO HATH ACQUAINTED THEE THEREWITH? HE SAID THE KNOWER, THE AWARE HATH ACQUAINTED ME. IF YE TWAIN TURN UNTO ALLAH REPENTANT, IT IS WELL, SURELY YOUR HEARTS ARE SO INCLINED, AND IF YE SUPPORT EACH OTHER AGAINST HIM, THEN VERILY ALLAH! HIS FRIEND IS HE AND JIBRIL AND SO ARE THE RIGHTEOUS BELIEVERS, AND FURTHERMORE THE ANGELS ARE HIS AIDERS.

(S66:V3-4)

The two who supported each other against him in the verse are both Aisha and Hafsa, two mothers of the faithful. He confided to one of them that he had abstained from eating honey or, it was said, from having sexual relationship with his slavegirl Maria. Then she divulged this to the other one (1). So, Allah, highly exalted be He, sent down the two verses making the divulgence of His Messenger's secret a crime for which the two women should urgently be penitent. Allah highly exalted be He, thus educated them in such an excellent manner.

— Narrated Abdullah Ibn Umar, may Allah be pleased with him : Umar Ibn Al-Khattab said,

"when Hafsa bint Umar became a widow after the death of her husband - I went to Uthman Ibn Affan and presented Hafsa (for marriage) to him. He said, "I will think it over". I waited for a few days, then he met me and said, "It seems that it is not possible", Umar further said, "I met Abu Bakr Assiddiq and said to him, "If you wish I will marry my daughter Hafsa to you". Abu Bakr kept quiet and did not say anything to me in reply. I became more angry with him than with Uthman. I waited for a few days and then Allah's Messenger, may the blessings and peace of Allah be upon him, asked for her hand, and I gave her in marriage to him. Afterwards I met Abu Bakr who said, "Perhaps you became angry with me when you presented Hafsa to me and I did not give you a reply?" I said, "yes". Abu Bakr said, "Nothing stopped me to respond to your offer except that I knew that Allah's Messenger, may the blessings and peace of Allah be upon him, has mentioned her, and I never wanted to let out the secret of Allah's Messenger, And if Allah's Messenger, had

refused her, I would have accepted her." (2)

In Ahmad's version:

"and it was a secret so I did not want to divulge it".

Ibn Hagar said :
The benefit to drive from this lies in excusing Abu-bakr who did not say "It seems it is not possible for me to marry" as Uthman did.

— The caliph Al-Farouk used to select those companions distinguished for their knowledge, faith and discretion to be his own counsellors. Despite being too young for such a prestigious position. Abdullah Ibn Abbas was one of them, and moreover, of the most favoured. 'I see that this man has chosen you as a counsellor. So, here are three things for you to learn from me : never divulge a secret of his : never backbite a person to him and never lie to him". His father, Al-Abbas, advised him. A man, upon hearing Al-Shabi relating this, said 'Each of these pieces of advice is worth more than one thousand. No retorted Al-Shabi, "each of them is worth ten thousand".

— Anas Ibn Malik, may Allah be pleased with him, said:

"The Prophet, confided to me a secret which I did not disclose to anybody after him. And Um Sulaim asked me (about the secret) but I did not tell her"

(Related by Al-Bukhari) (3)

Um Sulaim was Anas' mother. In another version, she asked Anas for what purpose the Prophet, sent him.

"It is something secret" said Anas. Thereupon she said, "Do not then divulge the secret of Allah's messenger".

In another version Anas said to Thabit Al-Banani:

"By Allah, if I were to divulge it to anyone, then O Thabit, I would have divulged it to you."

Confiding Secrets

A person with a sound mind would rather not do covertly things he would shun to do overtly, in other words, he must not do whilst away from the people what he would hate them to see him do, for though he is away from them, Allah is an Ever-Witness to his actions. He, also, should not

bear any Muslim a grudge in his heart that may goad him into saying ill things. And he must know that as far as his secret is kept hidden in his own bosom, he is master of himself. But, if he lets anyone his secret, the option will no longer be his but another's.

Yet, if there is no way but to confide the secret to another person, then he should not disclose it to everyone. The adage goes "A wise person's tongue is in his heart and a fool's heart is in his mouth'.

So, the person to be entrusted with the secret should be well chosen; he should be wise, trustworthy and honest. It is better, if possible, to select only one person for this purpose; so, in case the secret is made known, he will know that the one who divulged it is this friend of his; whereas if he has trusted more than one the secret will no longer be a secret and he will be at a loss.

And as the poet say :
Your secret is that to one only confided But with three secret is not unknown.

Keeping Secrets and Not Exposing "Aura" Private Parts and Weaknesses

The Prophet, may the blessings and peace of Allah be upon him, was quoted to have used the following invocation:

> *"Oh Allah, do not expose our "aurat" (sing. Aura) and give us security from that which frightens us".*

He was also quoted as saying

> *"He who does not expose a Muslim, Allah will not expose him in this world and in the hereafter"*
>
> (Related by Al-Bukhari and Muslim).

He also said to the Hypocrites:

> *"Oh you who have lip-believed and in whose hearts faith has never entered, never backbite Muslims, nor trace their weaknesses, for he who traced his brother's weakness. Allah will trace his, and he whose weaknesses are traced by Allah shall be exposed by Him even inside his own house". (4)*

By "Aura" is meant anything that one dislikes people to see of him b it something material such as the strict pudenda and inborn deformities, c

moral such as bad actions, words or manners. This is categorized as both a secret and a private part as long as people are ignorant of it, but not a secret if they are aware of it. A "Secret" may not be a private part 'even though the one to whom it belongs hates to make it known, such is the case with charity given covetly and prayers in private.

Virtue of Keeping a Secret

If a secret is of the kind that should not be publicly known, it is, as we previously stated, a "private part", and there is merit of not exposing a Muslim's "Private Parts" (and weaknesses) in keeping it, as the above Hadith states

> *"He who does not expose a Muslim, Allah will not expose him in this world and in the herafter;"*

and this is a right to every Muslim that should be observed by his brother Muslims.

In Sunna, there is, for instance, the story of Ma'iz who admitted committing adultery, so the Prophet, may the blessings and peace of Allah be upon him, applied the provision of stoning to him. Then Hazzal came, It is I who ordered him to come and confess' He boasted.

> *"Oh Hazzal, had you covered (not exposed) him with your garment, it would have been better for you" (5)*

said the Prophet, may the blessings and peace of Allah be upon him.

Yet, if the secret does not amount to a private part, keeping it will reflect full magnanimity, utmost trustworthiness and strong willpower.

Hence comes the proverb "Bosoms of the free are graves for secrets". A free person who is master of himself lets a secret die in his bosom, but the one who is slave to his whims lets the secret restively stir in his bosom until it slips away.

Keeping believers' secrets is indicative of perfect faith as the Prophet said,

> *"None amongst you believes (truly) till one likes for his brother that which he loves for himself".*

Al-Ghazli said "you, undoubtedly, would expect your brother not to expose your "private parts and overlook your demerits and shortcomings. You would be exasperated and furious if your brother showed the opposite of

what you have expected him to do. But, you will be asking for too much if you expect him to do what you do not intend nor are resolved to do for him, and Woe unto him who does so, as it is explicitly stated in the text of the Book of Allah, He says in surat Al-Mutaffifeen

> *WOE UNTO THE SCRIMPERS : THOSE WHO, WHEN THEY TAKE BY MEASURE FROM MANKIND EXACT THE FULL, AND WHO, WHEN THEY MEASURE UNTO THEM OR WEIGH FOR THEM DIMINISH. (6)*
>
> *(S83:V1-3)*

The merit of keeping secrets too ignominious to be revealed, may include the purport of steadying the one who has stumbled and helping him who has slipped into error to take the right path.

The Prophet, may the blessings and peace of Allah be upon him, said:

> *"Help those of a social standing when they stumble except in an act for which there is a prescribed punishment". (7)*

In another Hadith he said:

> *"He who sees a "private part" and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life". (8)*

Quality of secrecy

The one who is entrusted with a secret better for gets about it and convince himself that it is defunct as if he never heard of it, or forgotten he did, for this will be more conducive to keeping it than divulging it some day.

Then if he is asked about it, he is to ignore that he knows it, and if he sees that an insisting inquirer will be satisfied when told that it is a confidential matter that is not to be revealed to anyone, he should tell him so; but if he feels that the inquirer, when told so; will be more ardent and keener to probe the matter, he should abandon saying so and instead resort to using puns. The Prophet, may the blessings and peace of Allah be upon him, was quoted to have said:

> *"In puns there is a way-out from lying". (9)*

If resorting to pun is not possible and he is compelled to give an unequivocal reply, "it is permissible for him to deny, and even lie if the secret confided to him is a trust or if he fears that detriment will undeservedly befall the one to whom the secret belongs or his family or

property, and if he is asked to swear to that he is permitted to do so falsely, and the sin will fall with whoever unrightfully forces him to that". (10)

Some jurists such as Ibn Hajar Al Haitami said : "Lying may either be permissible or necessary. The determining rule for that is as per stated in "Al Ihya" "Lying is permissible if any commendable end cannot be attained save through it, then it becomes permissible and if such an end is a must it is obligatory as the case is when an impeccable person is seen hiding lest he should be killed or hurt by a certain oppressor or if such an oppressor inquires about a trust he wishes to set his hand on. Denying, even falsely, is obligatory, and if one is asked to take an oath, he must do so, resorting to pun, or else he breaks the oath and has to expiate. if the Sultan inquires about a vile deed he has perpetrated covertly, such as adultery or drinking, he is permitted to lie and say "I haven't". He may also deny knowing his brother's secret. "The adverse consequence of lying should be counter balanced with that of telling the truth, if the latter was graver, the secret keeper is then permitted to lie, and if the reverse was true or if he was doubtful as to its gravity, lying would be impermissible".

Then in order to corroborate the correctness of what is maintained, he cited the hadith of granting exception permission to lie while in war, when undertaking reconciliation among people and when a man talks to his wife in order to please her. (11)

Yet, we cannot accept what was maintained by Al Ghazali and advocated by Ibn Hajar Al Haitami without reserve. Any adverse consequence of telling the truth does not justify lying; nor every commendable end that depends on lying makes it permissible, for there is no liar who does not see that lying will either bring about a personal interest or ward off a detriment from him or from someone else. The Prophet, meant his hadith to be restrictive when he said:

"Lying is not permissible save in three cases ... etc." ..

My opinion, and what established principles necessitate, is that the basic rule governing this matter must be: lying is not to be permissible, for the sake of gaining an advantage in the first place, except in war; and as for warding off ill consequences lying is not to be permitted except in the three cases enumerated in the Hadith, or in other equally or more important ones, but not in those less serious, and Allah knows best.

And let the keeper of secret be on his guard against whoever may lure him to divulge the content of the secret unawares, for people have devious ways in this which cannot fool the smart.

Who Deserves Not To Be Exposed and Who Does Not

Al Hulaimi said : "Not to expose is a principle that must exclusively be applicable to vile deeds that do not make one an infidel. But if a Muslim was heard speaking the way unbelievers do, and was thus known to be a hypocrite, he should be exposed ... so that other Muslims can be aware that he is not truly one of them, and in order to prevent their being deceived by what he pretends to be, and thus allow him to marry from among them, eat animals he slaughters, let him lead them in prayers or be entrusted by any of them with guardianship of his children. And, furthermore, on the grounds that inviolability of whoever manifests unbelief is inapplicable, since inviolabitity of deeds we have deemed necessary not to be exposed exists in so much as the doer adheres to Islam, and when he renounces his religion he will no more be inviolable, and Allah knows best". (12)

Why Secrets Are To Be Kept?

First: For detriments caused by divulgence in most cases:

A Muslim should not do things to the detriment of his brother Muslims. It is not permissible for him to wilfully harm or be the cause of harm to his brother as Allah, highly exalted be He says in surat Al Ahzab:

> *AND THOSE WHO ANNOY THE BELIEVING MEN AND THE BELIEVING WOMEN WITHOUT THERE EARNING IT, SHALL SURELY BEAR THE GUILT OF CALUMNY AND MANIFEST SIN.*
> *(S33:V58)*

Detriments that may result from divulgence of secrets are various. Here are some:

A. Psychological and Moral Detriments:

If the secret represents a "weakness" which your brother keeps not exposed, be it a sin he has done, or a disgraceful act he has impulsively perpetrated and Allah, did not expose him then you reveal it, he will be greatly mortified, indignant and grieved, and what is worse, his testimony may be rendered unacceptable and consequently he may lose respectability and be shunned by his intimates and degraded by whoever has held him in reverence. All that may mar the relation with one's kindred, the fact which will eventually mean disruption of family ties and social relations. "If a sinner's secret is exposed the effect of sin on conscience will be lessened. For one might have feared that what he does may be known, the

fact which will either make him desist from going back to it, or try not to expose it. But if the secret is exposed, he will become less timid and daring and make what he has done a habit from which he will be unable to extricate himself. And this is harm inflicted upon him' (13) said Al Hulaimi.

Allah, prohibited spying which means the affairs of people that are kept concealed. The Prophet, said to Mu'awiya,

> *"If you pursue people's weaknesses, you vitiate or almost vitiate them". (14)*

One of the predecessors commented "A word heard by Mu'awiya from the Prophet, which Allah made to his advantage", i.e. made his caliphate a good one.

B. Physical Detriments:

If secret is revealed one way have to face a prescribed punishment or penalty.

C. Professional Damages:

If they feel that their secrets are at hazard clients of professional men such as doctors and lawyers may eschew dealing with them or avoid giving information needed to successfully carry out any assignment they are entrusted with, and thus they, as well as their professions in general, are deprived of so many a chance of success.

The same thing is true for in other occupations, Even drivers or servants who keep secrets that come to their knowledge, become more trusthworthy, but if not so, they will have little chances of finding jobs and most likely lose the present ones.

D. Financial Damages:

Divulgence of a secret by the keeper may result in a loss of an expected gain or a planned for advantage.

Look at how industrialists benefit from inventions they discovered and were instrumental in realizing huge amounts of profits so that they deemed them private trade secrets which they treasure. They invest them, enjoy their benefits and guard them closely. The Messenger of Allah, may the blessings and peace of Allah be upon him, said:

> *"Take care of what is useful to you and seek assistance from Allah".*

Divulgence of people's financial secrets may result in their being under the mercy of thieves, the fact which will eventually lead to impoverishment of the rich, and the wealth diligently and honestly earned goes to transgressors' to be wantonly toyed with. Certain fines and/or financial costs that have been kept as bay may be incurred upon the one to whom the secret belongs by revealing it.

Divulgence of the secret may lead to his losing a position out of which he earns his living.

How many a king have been dethroned, a government undermined and a nation ruined by scandals!

Second: For divulgence of secret may represent a breach of confidence as illustrated in the following cases:

A. When the secret is between a man and his wife:

In his speech delivered at the Farewell Pilgrimage the Prophet, advised that woman should be taken care of, and said:

> *"Verily you have taken them on the security of Allah, and intercourse with them has been made lawful unto you by words of Allah".*

Muslim and Abu Dawud related on the authority of Abu Said Al Khudari that the Prophet said:

> *"The most wicked among the people in the eye of Allah on the day of judgment is the man who goes to his wife and she comes to him, and then he divulges her secret".*

and in a version by Muslim,

> *"The most important of the trust in the sight of Allah on the day of judgement" (15).*

B. When your brother asks you to keep his secret before disclosing it to you and you pledged to do but later divulge it, you, then, commit a breach of confidence and of pledge (16), and therefore are a transgressor, exactly like hypocrites whose hypocrisy is known by such an ignoble act.

A person may ask his brother to keep his secret under certain circumstances or during a specific period of time and he accepts, consequently it becomes a trust as when he says: Dont't reveal this secret for three days, or: as long as so and so is alive, or: as long as I am alive, or the like.

C. When your brother talks to you about some private matter that is usually kept secret does not ask you to keep it, especially if he is seeking your advice in something which he intends or is determined to do: such will be a trust, for the Prophet said:

"A counsellor is given a trust",

and consequently, disclosure of such a private talk will be a breach of this confidence.

In a sagacity reflecting narrative a man went to a caliph and backbit a sage. When the caliph wanted to avenge himself on the sage, the latter said: let me see this backbiter. When he came he addressed him saying:

You are one who, either betrays a trust or tells a lie so you are fluctuating between betrayal and sin. As if he were telling the caliph: how could you blame me for something told by one who is either untrustworthy or a liar.

D. When the secret is a matter discussed in a private meeting, and those present trust each other, so they talk freely, and would not do so if a stranger, or someone they do not trust was present. The matter they discuss unreservedly is consequently a trust. The Prophet, was quoted to have said,

"if a man talks about something then he looks around, his talk is a trust". (17)

The commentator on Al Ihiya said: "i.e. if the speaker turns right and left for this implies he does not want anyone except the hearer to know what he has talked about". (18)

E. When a man is compelled out of necessity or need to disclose a matter that if known may mortify or harm him, and which he would not reveal if he were not in need of help. As it is the case when one goes to a mufti to inquire about the legal consequence of a an action he has done. If, when explaining the matter, he does not give details enough to point out the applicable provision, the mufti will be unable to give him a clear answer and explanation. So, if what is given of description is something that hurts when made known, it is a trust in the mufti's hands; and he is untrustworthy if he divulges it, and if it so happens later that the mufti testifies before judges disclosing the confession he has heard, his testimony is not to be accepted nor heeded, for breach of confidence makes one legally ineligible and consequently, not a competent witness.

This is the opinion accepted by Malikites, out of opposing views related to Malik. (19)

The same rule applies to the doctor when a patient reveals to him the cause of illness, which may actually be detestable, or part of the body which has to be uncovered for the sake of treatment and in which there, is a deformity or a repulsive disease.

He may reveal to a psychiatrist some person circumstance in his past life or conditions that concern his family in order to enable him to diagnose the illness and know the cause and treatment. Such disclosure is a trust with the psychiatrist, and he will be untrustworthy if divulged.

The same rule applies to social workers asked to check the living conditions of applicants for social welfare or assistance and of "Zaka". In this case what is confidentially told is a trust with social workers which must be kept and never disclosed except to the relevant authorities.

Nevertheless, this does not mean that information acquired through counselling muftis, doctors, etc., are not to be utilized in scientific research or quoted to prove or refute theories. Yet, if such information is given as confidentially it should remain anonymous.

Secretaries and employees in governmental or private departments are, likewise, ex officio entrusted. So, they must keep anything that they know, that if revealed, would inflict tangible or intangible detriment to the party that authorised them with such assignments. They will be untrustworthy if they divulge any information.

Third: For disclosure of secrets mostly represents succumbing to one's desires:

Allah, highly exalted be He, said

AND FOLLOW NOT DESIRE, LEST IT CAUSE THEE TO ERR FROM THE PATH OF ALLAH

That is because motives that instigate people to divulge other people's secrets or uncover their weaknesses are mostly attributable to desires. For instance:

A. "Selves" have a tendency to uncover things kept hidden and savour backbiting people and talking about their weaknesses especially in those gatherings where Allah, is not feared. So, whoever yields to his inclinations in such cases, will be following his own desires, and whoever

discloses what he knows of his brothers' secrets, is also salve to desire and a satan's ally "What motivates such acts is grudge, ill-nature and evil intent" (20) said Al Hulaimi.

If a man becomes a bosom friend of another and, thus, each is trustful of the other and accordingly confides to him the most intimate secrets and reveals to him certain things treasured in his heart or related to acts he has done, or perhaps, confides to him an opinion he holds about a certain person, the one who is entrusted with a secret should be worthy of that trust and be careful not to reveal it to anyone. Even if bonds of friendship between the two intimates are severed, neither of them should stumble into breach of confidence or reveal what has once been entrusted to him by old friends. If one so does, this will be indicative of ill-nature and malevolence. It is, likewise, not permissible for the other to say "He exposed me, so I expose him, and he humiliated me. So I humiliate him. "The Prophet says,

> *"Be trustworthy with whoever trusts you and betray not whoever betrays you".*

When a Muslim is afflicted, through disclosure of secret, in person, property, body or social standing, it is mostly because of covert hostility, masked rancour or hidden envy, on the part of him who discloses the secret.

"The cause exposing others' weaknesses or endeavouring to expose them is a hidden illness, namely malice and envy, for a malicious and envious person's inmost being teems with ill feelings, but he keeps them hidden and never shows them up so long as there is no opportunity. Once he finds one the mask falls and morals vanish and the hidden ill feelings seep out" said Al Ghazali.

Such prejudice becomes more ferocious when bonds of friendship break up and it, thus, changes into enmity. If that old friend has no religion to protect him against vice, he will exploit those old secrets and use them as weapons to destroy his new enemy who once was an intimate friend; In bringing about this lamentable end prejudice has had the upper hand and satan has been the absolute master whose orders have over transgressors. It is in such cases, as a matter of fact, that the ability to keep secrets by whoever is entrusted with them is proven. He who reveals a secret when angry is base, for concealment at time of contentment is quite normal by any standard; but at the time of anger such an ability is put to the acid test. So if a secret is then revealed, this indicates baseness,

ill-nature and evil intent. A sage once said "Do not befriend anyone who changes his tune in any of the following four cases: at time of anger or contentment, or when he shows greed or prejudice", on the contrary, faithfulness to brothers should not change in any case.

When is Disclosure of Secrets Permissible?

Secrets that the Sharia makes obligatory to keep as previously explained, should not be disclosed except in certain cases, inter alia:

1. Termination of Secrecy:

If a secret is announced by someone other than the entrusted person, the latter is not to blame if he discloses it. Termination of secrecy is governed by the following:

a. That the one to whom the secret belongs discloses it, consequently it is no longer a secret. Therefore, there is no harm in revealing it. Nevertheless, some details that have not been disclosed may still be secret if he hates to reveal them or if disclosure will bring him harm. Hence, whoever commits a vile deed and openly says he so did, is excluded from those whose secrets should be kept, because he was first to disclose his own secret and never cared about what is said to him. The Prophet said,

> *"All the sins of my followers will be forgiven except those of the Mujahirin"*

(those who commit a sin openly or disclose their sins to the people). An example of such disclosure is that a person commits a sin at night and though Allah, screens it from the public eye, then he comes in the morning and says:

> *"I did such and such (evil) deed yesterday, though he spent his night screened by his Lord (none knowing about his sin). And in the morning he removes Allah's screen from him".*

(Agreed upon).

If a man is tempted to a sin and is not witnessed save by Allah, he should keep his action veiled by the screen of Allah and turn to Him in repentance. But if he goes around uncovering the screen of Allah drawn upon him, telling this person and that about his ignoble deed. it is, then as if he were seeking praise for the ignominy and bragging about the sin: Yet,

by behaving so he becomes more and more detestable. Not exposing him will consequently be insignificant, since the lawfulness of keeping a secret and not exposing the sinner ends if he is one of those who rarely fall into sin and whose overt conduct is good and agreeable.

Allah, highly exalted be He, said

> *AS FOR THOSE OF YOUR WOMEN WHO MAY COMMIT WHOREDOM, CALL AGAINST THEM YOUR WITNESSES FROM AMONG YOU, THEN IF THEY TESTIFY, CONFINE THEM TO THEIR HOUSES TILL DEATH COMPLETE THEIR TURN OF LIFE, OR ALLAH APPOINT FOR THEM SOME OTHER WAY*
>
> *(S4:V15)*

Witnesses apparently are requested in this case to testify against the woman who is habitually sinning and is known for that. This reading of the verse is in conformity with what is known in the Sharia that a sinner who has turned repentant must not be exposed.

b. When detriments and disadvantages that may befall the one for whom a secret is kept or anyone else no longer exist in any form, whether physically, psychologically, morally or financially. This is the case if the reason for lawfulness of secrecy is to prevent a harm that may ensure. But if the secret is to be kept because it is a trust, the lawfulness of keeping it does not cease unless the one to whom the secret belongs permits that it can be made known or he himself discloses it.

c. When the one to whom the secret belongs permits disclosure. If he does so, the keeper of a secret is at liberty. But if he tells it to someone, he should do so in the best manner and select the best parts of what he has heard.

d. When obligation to keep a secret ends at a certain date, and this is due.

e. When the status of the one to whom the secret belongs changes from those whose secret is lawfully permitted to be kept to those whose secrets should lawfully be exposed; as it is the case when one commits apostasy, or indulges in announcing his own sins.

2. Death of One Whom A Secret Belongs:

In this case harm resulting from disclosure of secret often ceases to exist. Yet, there is more to it. Ibn Hajar reported: "When he dies, keeping that which has been necessary during his lifetime is no more so, except if

there is something offensive." He further added "The question, it seems, has three aspects: it is admissible, probably recommendable when it involves something that means praising for a good deed or a virtue, or the like. It is disliked, when it involves talking about the misdeeds of a dead person; and it may be obligatory when it involves something one is morally bound to mention". Unquote (21)

I add that such a right may be due to the deceased in the first place: which may, for instance, be a trust he has covertly left to someone's care and requested that the matter should not be made known. So the keeper must hand it over to the legatees.

3. When keeping is more harmful than disclosing:

Hence Hadith scholars have uncovered the biographies of transmitters and certain incidents concerning them that are indicative of transgression, lack of faith, or no objection to telling lies or the like, not for the purpose of defaming Muslims but in order that those transmitters may be foiled, and people may not be deceived by the Hadiths they relate and take them as sound; whereas they are either defective or forged. To allow the lie to exist and make legal consequences on the basis of Hadiths that are falsely ascribed to the Prophet is more harmful than disclosing lies of liars.

The same thing applies to testifying. If one who is superficially honest looking but actually is not is called upon as witness, he who knows him well has the right to speak ill of him and give the reasons so as to guarantee that the one who is testified against is not wronged.

4. Prevention of Hazards:

Al-Zubaidy said: "If (disclosure) must be resorted to so as to save a Muslim from being killed or by telling a reliable person that a woman is alone with a man in order to commit adultery spying by way of exception, is rightful, as Al Nawawi quoted 'Al Ahkam Al Sultaniya' (The Ruler's Provisions) and deemed it "Good". (22)

Jabir related that the Prophet said,

> *"Gatherings are a trust, so he who attends should not reveal a talk except in matters that are impermissible to be kept secret being detrimental to Muslims".*

Yet, this is a defective Hadith. In a version by Abu-Dawud:

"Gatherings are a trust except three: One in which blood is unlawfully shed, or an impermissible sex is permitted or a gathering where an unlawful property is unjustly taken".

'No comment on the part of Abu Dawud indicates that he takes it as an "approved" Hadith' said Al Zubaidi. (23) The hadith means that when a Muslim attends a meeting and finds "present company" indulged in a vile act, he should not expose them nor disclose what he has seen except if it is one of the three cases stated, for it is a big evil and not exposing it will be greatly harmful. (24)

In the light of the above-mentioned the legal consequence of some cases can be determined:

1. The doctor is sure that a husband is incurably sterile, then the wife, somehow becomes pregnant. The doctor plans to inform the husband or those who are concerned. Is it permissible for him to do so?

   What I can positively maintain is that the doctor is not permitted to say that the wife is pregnant as a result of adultery; for if he says so, he is a transgressor and is, thus, deserving to be punished by the provision for slanderous accusation, which is eighty lashes. This is if the woman demands so and the doctor fails to bring in four witnesses to support his claim. But if he just says to the husband "Examination" shows that you are completely sterile, and no more, he is in the right and it is not secret or a trust so that he is bound not to expose it. But if he knows that the woman has sinfully committed such an act, it is better, for the sake of keeping the integrity of the family, not to disclose. For disclosure will be of no consequence as far as attribution of pregnancy is concerned; it is the husband's since the son is for the marriage bed even if the husband disavows him, unless he takes the oath of "li'an" to effect the act of repudiation.

2. If a doctor commits an act that is in contravention with the ethics of the profession, then a fellow-doctor discovers that, should the latter report the matter and disclose the secret?

   That, I believe, differs from one case to another; if the doctor has molested the other party or taken advantage of minority, insanity or the like, not exposing the culprit is by no means more important than enabling the victim to get his/her right.

   But if the act is committed with the consent of the victim, when fully

competent, and it is just a slip, then the doer is penitent, the matter should not be disclosed, especially when the perpetrator seeks assistance from the colleague, who has discovered the affair, in order to redress what has happened.

But if he persists in going astray and making advantage of his position, he should be stopped.

3. If the doctor finds out that the husband has a venereal disease, should he tell the family?

   The answer, in my opinion, is that if the disease is infectious and is feared to be passed on to his wife or the rest of his family members, the harm that is expected to afflict the innocent is greater than the one from which the patient will suffer when his condition is made known. In this case the doctor must reveal the matter if asked or when necessity arises.

4. A patient has an eye operation, or is injured and as a result his ability to see is weakened to an extent that driving poses a hazard that threatens him and other people; should the case be reported to authorities?

   The answer, I believe, is that there is no objection to doing this to prevent him from driving temporarily, if his eyesight weakness is not permanent, or in order to take away the driving license, to prevent ensuing risks, if the illness is permanent.

5. An oculist does his best but fails to cure the disease, and consequently the eye is damaged, is he lawfully liable from the Sharia point of view, and should he disclose the secret?

   The answer is that if he is qualified, and has done all that an experienced doctor has to do, and his work has not been the cause of damage, he is not to pay damages and there is no secret to try to conceal.

6. An oculist makes a mistake and damages an eye by using a certain instrument inadvertently in a part of the eye and it is, thus, damaged from where he has intended to treat it. The patient does not know that the doctor is responsible for the damage. Should the doctor disclose the matter, and pay damages?

   The answer is: Since the damage is caused by the doctor's mistake, he has to pay due indemnity for the damage is the same whether

caused intentionally or unwittingly. But if he did his best and the damage happens from where he does not intend and cannot prevent, he pays no damages. Yet, if it is necessary to pay such damages, he should inform about that because it is someone's right that is not forfeited except by waiver or effectuation.

7. If a man and a woman visit a doctor to have a pre-marriage examination, then a certain disease is found out in one of them, which may result in having a deformed child, should the doctor inform the healthy one, and is he lawfully answerable for that, and is the patient marriage partner to be informed?

   The answer is:

   The fact that both partners have come for examination, it seems, makes it necessary to inform them with the results, or else the doctor will have deceived them and failed to do his duty in furnishing them with the actual health condition.

8. If a doctor is informed by his patient who occupies a sensitive position (an aircraft pilot for instance) that he, as well as some of his fellow pilots, are drug addicts; should the doctor inform those responsible of the secret, or should he report to the authorities concerned to take the necessary measures?

   The answer, in my opinion is that in the Sharia the doctor is lawfully obliged to notify the patient's superiors as well as, the authorities concerned, if there is no administrative regulations, in order to prevent the horrible hazards that may result from piloting an aircraft by a person under influence of narcotics.

9. If a doctor is told by a female patient that she has left her illegitimate newborn in the road or at any other place to avoid a scandal, should the doctor inform the authorities, or should he keep the secret?

   My answer is that he should keep the secret especially if she requests him not to disclose it and he makes a commitment to keep it. Nevertheless, he should not reveal the secret even if he does not pledge to do so for fear of highly probable risks on her life, and because of severe moral damages that, if secret is revealed, may befall the woman herself, her family and all her children.

10. One of a patient's eyes has lost the power to see, then it is superficially repaired so that whoever looks at him does not doubt

that he cannot actually see except with one eye. The patients requests the doctor not tell (his wife or fiancé;). Should the doctor respond to his request and conceal the secret?

The answer, in my opinion, is that the doctor should not disclose this secret for the patient will be harmed, and Allah knows best.

Annotations

1. Original story in 'Al-Bukhari' The Book of Oppression 25. The Book of Wedlock 83.
2. Related by Al-Bukhari *(Fath Al Bari* 9/176) and by others.
3. Fath Al-Bari 11/82. The Book of Asking permission' 46.
4. Related by Abu Dawud with "good" ascription, and by Al-Tirmidhi with nearly similar wording on the authority of Ibn Omar. He described it as "approved" (Al-Ihya & Takhrig Ahadith 5/1001). By Al Iraqi.
5. Related by Abu Dawud. Al Nesai and Al Hakim and said: "Sound". (Takhrig Ahadith → Al-Ihya 5/999) see also "Al-Zawajir" By Ibn Hajar Al-Haitamy 2/120.
6. "Al-Ihya" 5/960.
7. Al-Minhay 'Fi Shu'ab Al Iman' 3/362.
8. Al-Iraqi said: Related by Abu Dawud, Al-Nesa'y and Al-Hakim on the authority of Ukba Ibn Aamir and said: "sound" (Sharh Ihya Ulum Al-Deen 5/216).
9. Related by Ibn Addy Al-Mannawi commented on Ascription to Dawud "left" by Abu-Dawud.
10. Al-Ghazali: "Ihya Ulum Al-Deen" (Sharhul "Ihya 5/216).
11. Al-Zawajir" By Ibn Hajar Al-Haitami 2/186 - Cairo, Mustafa Al-Halabi 3200 A.H.
12. Al-Hulaimi: "Al-Minhaj Fi Shu'ab Al-Iman" 3/364.
13. Al-Hulaimi: "Al-Minhaj Fi Shu'ab Al-Iman" 3/362.
14. Related by Abu-Dawud with 'sound ascribtion' ("Takhriq Ahadith Al-Ihya" 5/1000).
15. Sahih Muslim: Verified by Muhammad Fouad Abdulbaqi. Book 16 Wedlock 123.
16. See Al-Hulaimi: "Al-Minhaj Fi Shu'ab Al-Iman" 3/28.
17. Al-Iraqi said: Related by Abu Dawud in the Book of Good Manners (Al-Adab) and Al-Trimidhi in The Book of "Al-Bir Wal-Silah" on the authority of Jabir. He commented: "approved" (Sharhul-Ihya' 5/216).
18. Sharhul-Ihya' 5/216.
19. Tabsirat Al-Hukham Bihamish Fathul-Ali Al-Malik, Fatawi Al-Sheikh Eleish 1/217 in the book of Mawani' Al-Shahada.
20. 'Al-Minhaj Fi Shu'ab Al-Iman' 3/362.
21. 'Ihya Ulum Al-Deen' 5/958 Al-Shab Ed.
22. Ihya Ulum Al-Deen 5/960.
23. Al-Ihya Wa Sharhu 5/278.
24. Fathul-Bari 9/177-178.

A DOCTOR DISCLOSING SOME CONFIDENCES FOR PUBLIC GOOD, IN ISLAMIC SHARIA

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Islam is the religion of life with all its dimensions of this world and of the hereafter. It is the all embracing religion of humanity. It is the religion of sublimity, perfection and completeness.

Allah, glorified be He, said

TODAY I HAVE PERFECTED FOR YOU YOUR RELIGION, AND HAVE COMPLETED MY FAVOUR UPON YOU AND AM WELL PLEASED WITH ISLAM AS YOUR RELIGION.

It is the comprehensive religion which

FALSEHOOD CANNOT COME AT IT FROM BEFORE IT OR BEHIND IT. IT IS A REVELATION FROM ONE WISE PRAISE-WORTHY.

It is the religion that takes care of Man and determines the path to safe and stable life. It takes care of Man as regards both his covert and overt conduct. He is looked after, spiritually and physically, and while conscious or unaware, and in all matters. It has legislated for him laws and fundamentals that help keep up his dignity as human, and thus preserved his faith, self, honour, property and mind from being adversely affected, so that he can live safely, fearlessly and comfortably complying with what Allah as well as his fellow men require of him without any negligence nor remissness, so that he, and consequently the whole humanity, may happily live.

It has legislated for him codes that help realise his interests, cleanse him and society from all kinds of impurity and bring him full consummate happiness. This kind gesture on the part of those responsible for health

affairs in Muslim countries, including Kuwait, who hold scientific conferences for the purpose of discussing some intricate issues, that concern the Muslim doctor, in order to know legal consequences of Sharia as regards many cases, has been instrumental in giving impetus to Islamic medical research. It is, indeed, a kind gesture and a good initiative that has revived an old tradition where the doctor was a jurist and the jurist a doctor.

Sharia is an integrated entity with which everyone should be acquainted to the extent that enables him to exercise his speciality in a way that does not contradict Allah's Law or contravene a prescribed text in the Book or in the Sunna.

The research works submitted in this symposium are of special significance, a vital objective and dimensions which, we hope, will lead to the welfare of all with permission of and success granted by Allah, glorified be He.

From among the subject specified by the Conference I have selected the first one: "Secret-Disclosure" which focuses on the following:

1. A patient who commits an improper act: for example, If a wife, whose husband is incurably sterile, somehow gets impregnated; should the doctor disclose her secret and inform the husband or authorities concerned?

2. When a doctor does an act that is in contravention with the ethics of the profession then found out by a colleague; should the latter report the matter and, thus, reveal the secret?

3. What should a doctor's attitude be if he finds out that a husband has got a venereal disease; should he tell the family or not?

I hereunder submit the opinion of the Sharia that Allah, glorified be He, has made me successful to present on these cases. And I hope that Allah, glorified be He, will inspire us with the right thing and help us avoid error.

Inquiry One

"The case when a doctor is sure that a husband is incurably sterile, then the wife becomes pregnant by some means"

We will discuss this subject from two aspects:

Aspect One is:

That the child is for the marriage bed as in the Hadith of the Messenger of Allah, may the blessings and peace of Allah be upon him: Abu-Huraira was reported to have said: "The Messenger of Allah, said:

"The child is for the bed and stones for the one who has done illegal sexual intercourse" (1).

Related by Aljama'a except Abu-Dawud. In a version by Al-Bukhari the Hadith runs as:

"The child is for the owner of the bed.."

Muslim Ulama differed as to the meaning of "the bed". Yet most of them maintained that it was a substantive for "woman" and the word may be used to mean "sleeping". It was also said that the word is a noun for "husband". This was reportedly maintained by Abu-Hanifa. Ibn Al-Aarabi cited, to corroborate this viewpoint, a line of verse by Ibn Ju'reij:

She spent the night embracing him, And he spent the night her bed.

In the Qamus (i.e Dictionary) the "bed" is "man's wife"; and "beds raised" was said to belong to the same root, and the woman "bedded" by the man.

And

"stones for the one who has done illegal sexual intercourse",

i.e. disappointment for the adulterer, that is; he has no right to the child. The Arabic saying goes "The stone is for him and earth in his mouth" meaning: He gets nothing but disappointment.

The apparent meaning of the Hadith is that child is attributed to father only after "bed" is proven, and it cannot be proven, except after coition, in a legally good or bad marriage. This is the generally maintained opinion' says Al-Shukani 'Abu-Hanifa was reported to have said: "Attribution of child is effected merely by conclusion of contract". It was reasoned that more supposition is sufficient (in confirming attribution)'. (2)

In defence of what was ascribed to Abu-Hanifa, he argued "The opinion that mere conclusion of contract is sufficient in proving "bed" is obvious ossification".

Ibn Al-Qayyim reported that Abu-Hanifa had said "The very contract, even if it is known that he had no coition with her, or even more if he had

divorced her immediately after concluding it at the same marriage council, automatically gives "bed" i.e. status of wife to the contracting woman". This indicates that he did not heed supposition in the first place.

This argument is supported by what he is quoted to have said that "bed" is proven and child is attributed to husband even if he was known that he did not have sexual intercourse, owing to the fact that distance between him and his wife was too long to reach her within the period that pregnancy occurred.

Defending their standpoint Hanafites respond: "If husband's circumstances were as described and that he did not sleep with her that night, he would be able to exercise Li'an. And since he has not disavowed child by this means, we should not negate attribution to "bed" when possibility exists". (3)

Also arguing for this Ibn Al-Humam says "Ideation is, indeed, a condition (i.e ideation of consummation of marriage is a condition for attributing child to him). Hence a child born by a woman married to a young boy is not attributed to him. Ideation is good and true for application to the case of the western woman since the miracles of al-awliya (i.e. Muslim saints) is a principle irrefutable..."

The argument that attribution is not conditional on coition, since pregnancy may occur by letting the semen enter the vagina without the sexual act, is rare and the normal sex act is the common practice.

Ib-Taimeia maintained that it was necessary to verify definite consummation. He said that such an opinion had been referred to by Ahmed and advocated by Ibn Al-Qayyim' Do Linguists and traditionalists regard a wife whose marriage has not been consummated, as "bed"? And how would Sharia possibly admit attribution to a man who has never consummated marriage with his woman, nor even met with her, in private merely because of existence of the possibility? This possibility is categorically proved not to usually exist, so a woman does not become "bed" except by definite consummation' Ibn-Taimeia argued.

I say that definite consummation is difficult to verify, and stipulation of it leads to nullification of kinship attribution for many children, precaution must be resorted to in such matters, and adoption of the mere possibility will be in conformity with such precaution. (4)

"Kashshaf Al-Qina" (5) also refers to precaution in confirmation of kinship attribution: "And if he marries a woman in a place where he is

known not to be able to privately meet with her such as in the presence of the ruler or of someone else and then divorces her at the same council or dies before he is absent from them, namely from attendants of council, kinship, i.e. of child, is not attributed to him for it is sensibly and optically known not to be his. Or if he marries her whilst they, i.e. the two spouses, are separated by a distance that is too long for him to reach her within the period she gives birth to the child, as it is the case when a man in the East marries a woman in the West where the time is not sufficient for pregnancy period; arrival and then coitus, kinship is, then not attributed to him That is if he lives, or else kinship will be attributable to him on the basis of possibility - (6) Mentioned in the Subsidiaries (i.e. of Fiqh).

"And if he is able to reach her, within the time that lapses between conclusion of contract and delivery, paternity is attributable to him".

Paternity is not attributable if husband is a boy under 10 years of age, for not attaining maturity, or if penis and testicles are removed or if only testicles are so and the penis is there, since a child is not created without semen and one whose testicles are removed, has no male seed, and what comes out of his penis is nothing but aqueous substance that is no male seed for a pregnancy to form as he has no semen, and insertion of a penis that will not ejaculate male seed is of no consequence as the case when a penis of a young boy is inserted.

However a child is attributable to one whose penis only is removed for he can, by rubbing, produce the male see that is needed for creating a child, and attribution to an impotent is also possible, for he may emit semen. Shafa'ites maintained that the possibility of his fathering the child is valid.

The man who takes the oath of disavowal of paternity needs only disavow kinship of a child that he could have possibly fathered. If that is impossible to be so, as when (the woman taking the oath) gives birth after six months or less from date of contract (the infant being the size of full term) - for, thus, the element of time enough for coitus and delivery does not exist - or in more than those two periods by two fold and more, but he divorced her at contract council, or if he, while living in the East, marries a woman in the West and time enough for meeting each other and having coitus and for the least possible pregnancy period does not lapse, the child is not attributable to him since it is impossible that he could have fathered it, and thus there is no need to resort to Disavowal Oath - Al-Shirbini maintained.

"Fathering a child is also not possible in cases such as when husband is young or when emasculated - i.e. with no testicles according to the "School" Nevertheless, a young boy can be deemed capable of causing conception at the age of nine, completion of nine years is stipulated, then is asked to take the oath of disavowal. If he claims pubescence even immediately after denial, he is held truthful." He further added the exception is the one whose penis is removed but not his testicles, and vice versa as they can be capable of causing conception.

Then Al-Shirbini commented on Al-Nawawi's argument that "He may take the oath of disavowal" by saying "Note: the issue of saying "may.." indicates that is not necessary, even if it is known that the child is not from him, and does not mean that it is necessary in this case".

Malikites also adopted the opinion that the possibility of his fathering child was valid.

Al-Khurashi (7) states "Kinship of child is rebuttable without the Disavowal Oath "if she gives birth to it in a period of time fairly less than six months - say by five days - for existence of lawful inadmissibility for rebuttal".

The same rule is true if husband, at the time of conception, is a young boy or magboub "completely emasculated, i.e. without a penis or testicles", for existence of logical inadmissibility, and apparently whether he had coitus or not, ejaculated or not, and this is the opinion suggested by Adbulhameed.

The same rule is also applicable, if a man in the East enters into a marriage contract with a woman in the West and the contract is concluded by their legal administrators and each of them is known to have remained in their home areas until pregnancy occurred, on account of existence of natural inadmissibility; and it is not understood to say (with a man in the East), but what is meant is that she claims the child is from whoever is at a distance too long to reach her even if covertly.

In "Hashiyat Al-Desouqi" on "Al-Sharh Al-Kabeer" a comment on "like magboub (that is the eunuch) whose testicles are removed or only the left one according to what is deemed correct. The statement: according to what is deemed correct": is in Al-Shamil. The gist is that : when the left testicle is found and semen is emitted, the Disavowal Oath is absolutely necessary, i.e. even if penis is removed. But if there is no left testicle, and yet there is a penis there should be no Disavowal Oath, even

if semen is emitted, and child is diavowable without it. Al-Musannaf explains this in another way that is stated in "Al-Udda" as follows : women are to be consulted about one whose penis or testicles are removed. If they say that he is able to beget children, he takes the Disavowal Oath, otherwise he does not. But Al-Musannaf was counter argued with the opinion that what is stated in Al-Mudawwana is that it is the knowledgeable who are consulted, not simply women in particular.

Al-Qurafi's opinion is that both the "magboub" and the eunuch if they do not emit semen they do not take the Disavowal Oath for child can not be attributed to them. But if they emit semen they must take the Oath.

Al-Mudawwana (8) states "I said; what do you say about a man who married a woman and did not consummate marriage nor even did his wife see his private parts until she gave birth to a child who is disavowed by him. Should he take the Disavowal Oath or not, in Malik's opinion? He answered : Malik said that he must take the Oath if she claimed that the child was by him, or that he made love to her, and if what she claimed was possible, and if the child was born fully mature after six or more months from date of marriage. In this case she is eligible for half of the sum of money settled upon her but not for a home or a compensation that is paid to a divorced untouched wife. I said: what if he has divorced her before consummation and she has a child in a period of time that women usually take to deliver. Should such child be attributed to him? And must he take the Oath? He answered: Malik said that the child must be attributed to him except if he takes the Oath. If he does so the child is not attributed to him. This is the case if her claim that he has made love to her before divorce is reasonable.

(Ibn Wahb) reported that Younis had asked Ibn Shahab about a man who married a maiden, and had not joined her to him until she got pregnant then said: This is by my husband, he used to sleep with me covertly while I was with my family; and when the husband was asked he said: I did not sleep with her, and I disavow her child. (He) said: Her case is like those who must take the Disavowal Oath, and she must marry until she delivers her baby, and they should never to be brought together, and her child is to be attributed to her, and anyone who accuses her falsely (of adultery) is to be flogged in enforcement of the prescribed punishment.

Ibn Wahb said: "Younis and Rabi'a had said: If she has said so and he learns about it, even if after years, he takes the Oath against her. Yehia

Ibn Said and Ibn Qu'seit said that he must take the Oath if his disavowal is definite."

Conclusions

From the above juristic texts the following points are concluded:

First

Child is not attributed to husband if there is a lawful, rational or natural inadmissibility. In any of these cases husband is not obliged to disavow kinship. In the following I shall further explain these cases:

A. Attribution of child to husband is rejected without Disavowal Oath if a legal inadmissibility for that exists; that is if wife delivers it (fully developed) in fairly less than six months - by five days for instance - from date of contract, and provided that husband is able to beget children. The basis for this is Ijma' (i.e. consensus of opinion).

B. The same thing is true if rational that is when husband is absolutely unable to beget children owing to being:
Young, if at the time of marriage, less than nine years old - as Shafa' ites maintained - or under ten - as it is maintained by Hanbalites (9), because he has not yet attained pubescence. To determine that, experts should be consulted.

"magboub" (eunuch) or, with testicles and penis removed, and he does not emit semen, and this is decided by experts that, being in this condition, he is unable to beget children. In this case attribution of child is rejected without the Disavowal Oath.

This barrier, which is called "rational inadmissibility" by Malikite jurists, is established upon the opinion experts, namely doctors, for it is they who are responsible for making decision as whether those people are able to beget children or not.

Moreover, the examples given by jurists to show things that prevent a man from begetting children are just instances to get, through explaining them, to the intrinsic meaning for which attribution of child to husband is rejected without Disavowal Oath, namely his inability to beget children whether because of removal of genital glands, or for any other reason in which this meaning is realized.

C. Paternity is also rejected without Disavowal Oath if a natural

inadmissibility for that exists; that is if husband is in a condition that makes sexual relationship, with his wife, impossible. They give an example - to illustrate this condition - of two spouses one of them is in the East and the other in the West, and the contract is concluded by proxy, and it is not possible that they could have met after the marriage contract is drawn then the wife gives birth.

In this case two trends of Islamic jurisprudence appear:

Trend One: which is the opinion of the majority of jurists who see that attribution of such a child to husband is rejected without need to the Disavowal Oath (and this is the opinion maintained by the Malikites, Shafi' ites, Hanbalites and those who followed them) on account of existence of natural inadmissibility as it is maintained by Malikites, impossibility of his fathering it - as it is argued for by Shafi'ites or for the fact is obvious to reason - as Hanbalites maintained, and the child is not attributed to the father who does not need to disavow it.

Trend Two: Which is the Hanafites opinion - and approved by the Hanbalites: If husband dies after birth of child - they see that child is attributable to husband, since the child is for the marriage "bed". Husband may take the Oath if he has not had coitus with his wife. If he does, they separate and the child is attributed to its mother and not to the husband.

This opinion aims at attributing the child to the husband, so as to safeguard its kinship as a precaution to protect the child. It seems that the husband has the option to use that right, if he keeps silent and does not take the Oath, the fundamental rule is, then to attribute child to him in so far as it has been born under the marriage contract and in the period of time within which any other child may be born under similar contract.

The Shafi'ites raised an important question: Is it obligatory for husband to reject kinship of child if he knows that it is not by him?

They answered: "it is obligatory". I, also say that it is so, as long as this knowledge, that child is not his, is indisputably certain. Doubt, assumption and imagination are not used in rejection of kinship. Rather, precautions are always taken confirming it in view of the fact that harms that befall husband and wife are not comparable to those with which the child will be afflicted all his life.

Second

Can anyone other than husband and wife negate paternity? The

doctor, for instance, when he has been aware of husband's condition and that he is not able to beget children?

To answer this I say:
If the doctor so declares, he is deemed as accusing the wife of adultery, and thus is demanded by Sharia to prove his accusation. Proof is either supplied by wife's admission to committing adultery, and the doctor is thus exonerated, from the prescribed slander punishment or by supplying three witnesses in addition to himself to testify to seeing her committing adultery and to describe what has happened in terms of time, place and manner of action - in accordance with what is prescribed by the Sharia - he is, then, also exculpated.

Allah, glorified be He, said in Surat Al-Nur (Light):

AND THOSE WHO ACCUSE CLEAN WOMEN AND THEN BRING NOT FOUR EYE-WITNESSES, SCOURGE THEM WITH EIGHTY STRIPES AND ACCEPT NOT THEIR TESTIMONY FOR EVER. AND THESE! THEY ARE THE TRANSGRESSORS - EXCEPTING THOSE WHO THEREAFTER SHALL REPENT AND MAKE AMENDS. VERILY ALLAH IS FORGIVING, MERCIFUL).

(S24:V4-5)

After the Quran showed the prescribed punishment for a person other than the husband falsely accusing clean men and women of unchastity it shows the legal consequence for a husband accusing his wife falsely of unchastity. He, high glorified, says in Surat Al-Nur (Light):

AND AS FOR THOSE WHO ACCUSE THEIR WIVES AND THERE ARE NOT FOR THEM WITNESSES EXCEPT THEMSELVES, THE TESTIMONY OF ONE OF THEM SHALL BE FOUR TESTIMONIES BY ALLAH: THAT VERILY HE IS OF THE TRUTH-TELLERS. AND THE FIFTH, THAT THE CURSE OF ALLAH BE UPON HIM IF HE BE OF THE LIARS. AND IT WILL REVERT THE CHASTISEMENT FROM HER IF SHE TESTIFIETH BY ALLAH FOUR TIMES THAT VERILY HE IS OF THE LIARS AND THE FIFTH THAT ALLAH'S WRATH BE ON HER IF HE IS TELLING THE TRUTH.

(S24:V6-9)

— This "li'an" (here Mutual Oath of condemnation, or Sworn Allegation of Adultery - must be taken in case a husband accuses his wife, in the manner shown in the Verse, then they separate and are never to be joined again, and the child is attributed to its mother.

As to any other person accusing a woman of adultery - even if he is aware of it -, he must prove that as we previously showed, or else the

prescribed punishment for Slander is applied to him.

Al-Qurtubi says (Vol. 12, p. 203) when commenting on Verse 13 of Surat (Al-Nur) which reads:

> *WHEREFORE DID THEY NOT BRING FOUR WITNESSES THEREOF? THEN WHEN THEY BROUGHT NOT THE WITNESSES, THOSE! WITH ALLAH THEY ARE THE LIARS.*
>
> *(S24:V13)*

That is Allah's judgement on them, that they are liars.

A man may fail to give evidence though he is truthful in his accusation, but to Sharia and in appearance he is a liar, but not in Allah's knowledge, glorified be He, - He, highly exalted and glorified, has made provisions for penalty according to His Law, which is prescribed for the World of Nature, and not according to His knowledge of kinship origins as they really are, For this is a consequence of the Hereafter.

I say (that is Al-Qurtubi) this meaning is strongly reinforced by the Hadith related by Al-Bukhari on the authority of Omar Ibn Al-Khattab, He said:

> *"Oh people, now there is no longer any more new revelations. Now we judge you by the deeds you practise publicly, so we will trust and favour the one who does good deeds in front of us, and we will not call him to account about what he is really doing in secret, for Allah will judge him for that; but we will not trust or believe the one who present to us with an evil deed, even if he claims that his intentions were good".*

In Nail Al-Awtar, Vol. 7, p. 103 - 104 it is approved by consensus that : On the authority of Ibn Abbas, the Messenger of Allah, made Al-Ajalani and his wife take mutual oath of condemnation, Shaddad Ibn Al-Had said : was she the same lady regarding which the Messenger of Allah, had said,

> *"If I were to stone to death someone without a witness, I would have stoned this lady"*

He said,

> *"No, that was another lady, who, though being a Muslim, used to commit adultery openly" (agreed upon).*

On the authority of Ibn Abu Abbas, the Prophet said:

> *"If I were to stone to death someone without witnesses, I*

would have stoned this lady, she used to arouse suspicion in her utterance, appearance and the people who enter her place"

(Related by Ibn Maja).

Explaining what was stated in the Hadith he said:

"Saying though being a Muslim, she used to commit adultery openly"

and in a version by Al-Bukhari

"though being a Muslim, she used to arouse suspicion by her outright misbehaviour"

means she had shown up immoral acts but there was no proof or confession to substantiate that as previously stated when we discussed the Oath of Condemnation.

Al-Musannaf (Ibn Hijar), inferred from the Prophet's statement,

"If I were to stone to death someone without witnesses, I would have stoned this woman"

that the prescribed punishment must not be applied by just accusing one. Definitely, application of prescribed punishment without lawful proof is, rationally and lawfully unacceptable, and nothing of it should be permissible except what the Sharia has approved of, such as Qur'anic-governed prescribed punishments, the law of equal revenge (i.e. qisas) and the like after firm proof is made, for mere surmise, accusation and suspicion are conducive to falling in error, and anything that is so, should not indisputably be used to make afflicting and harming a Muslim permissible. Al-Shukani then lists the Hadiths that mean : No penalty on suspicion, among others :

According to Abu-Huraira the Prophet said:

"Do not apply prescribed punishment so long as there is doubt"

(Related by Ibn Maja).

Aisha said: The Prophet said:

"ward off application of prescribed punishments from Muslims as far as you can. If he has a lawful way-out, then let him go. It is better for the Imam" i.e judge" to err by pardoning than by punishing".

Several Prophet's companions corroborated this.

Al-Bukhari, after challenging the authenticity of the two aforegoing Hadiths said: The most authentic version of the Hadith is that related by Sufyan Al-Thawri on the authority of Asim Ibn Wa'il on the Authority of Abdullah Ibn Massoud, he said

"Avoid application of prescribed punishments on suspicion. Ward off sentencing Muslims to death as far as you can".

"Omar, was reported to say 'I prefer to make a mistake in not applying prescribed punishment on suspicion to applying them".

In Musnad of Abu-Hanifa: on the authority of Ibn Abbass, quoting the line of transmission, "Avoid applying prescribed punishments on suspicion" Al-Shukani said: "Though doubts were raised about the authenticity of what is stated in this section, other (versions) of what we mentioned of the Hadith lend support to its authenticity and thus it is good to be used as a proof for lawfulness of avoiding application of prescribed punishment if the evidence is less than concrete".

In the following I quote some juristic texts that elaborately discuss the prescribed punishment for slander:

Hanafites:

"Prescribed Punishment is applied to a freeborn or a slave, even if a zimmi (i.e. a free non-Muslim subject living in a Muslim country) or a woman, who slanders, an innocent (10) Muslim and provided that the slandered is not a son or a grandson of the slanderer nor dumb (11) nor magboub (one whose penis and testicles are all removed - as he explained in the Section on the Impotent). It is well known that same is applicable to one whose penis only is removed". On the basis that his commiting adultery is impossible, and so is not offended by slander since the accusation will, thus, be logically false, or the one whose testicles, not penis (12) are removed, or male sexual in intercourse in unlawful marriage or with a slave-girl with whom sexual intercourse is not lawful, or if she, i.e. the woman slandered, is one without a genital opening "ratqa" or if she has a bone protrusion at the opening of the vagina making male organ insertion impossible "qarna" and provided that chastity and freedom is established at the time of applying the prescribed punishment. If the plaintiff apostatizes (13) the punishment for the slanderer is dropped and remains so even if the slandered may later re-profess Islam.

Malikites:

(Al-Desouki) said "There are eight conditions for the prescribed punishment for slander: two to be found in the slanderer exclusively: Puberty and sanity, and two in the slandered exclusively (whether, slandered by rejection of attribution or adultery): Freedom and Islam, and four concerning the one slandered as committing adultery or fornication: Puberty, sanity chastity from fornication and organ (i.e. having the sex organ for committing adultery or fornication) that is because the prescribed punishment is inapplicable if the one slandered of such act is magboub or had the penis removed before attaining puberty or after it provided slander is amde at a time at which he was magboub, and the slandered attains puberty - whether the one slandered is accused of doing or being done to - as when the slandered female becomes marrigeable though not yet menstruates, is, then, punished by the prescribed provision since disgrace has, thus, befallen her exactly as it is the case with an adult.

Even if he slanders the woman taking the Disavowal Oath (14) or her son on the basis of his attribution to his father who took the same oath being rejected, prescribed provision for slander is here applicable because in this case the Disavowal Oath does not definitely negate the attribution of the son, whose mother takes the Oath, and the father who takes the Oath may well be his father.

So, the Disavowal Oath is not deemed a suspicion on the basis of which punishment is not applied to the slanderer.

If the slanderer of fornication, sodomy or negation of attribution to a father or a grandfather is a person other than the father, even a husband slandering his wife, then the prescribed punishment is applicable if what he says is understood to be a slander due to presumptions - as being on ill terms... However, a father who allusively makes accusations against his son is neither subject to prescribed nor discretionary punishment since it is improbable when the accusation involves his own son. Yet if he openly slanders his son prescribed punishment is applicable to him.. but more probably it is not.

Or if he says to a woman who is not his wife 'you fornicated by force - and she said he is a liar, then he is subject to prescribed punishment, whether a presumption, that his intention as to accuse her of fornication, exists or not; for when he makes the statement, the utterance 'you fornicated' came first, the postmodifier 'forcibly' is deemed a comment intended to negate the fact, and so it is of no consequence.

If a presumption, that his intention is that he said so by way of apology for her, the prescribed punishment is not applicable to him. If he mentions "forcibleness" first by saying 'you were forced to commit fornication, prescribed punishment is applied to him when a presumption, that his intention is to accuse her of fornication, exists. But if no presumption exists or serves as an apology for him then no punishment is applicable to him.

If he says to his wife 'you have committed adultery forcibly', he takes the Oath of condemnation, otherwise the prescribed provision for slander shall be applied to him if he does not bring forward an evidence for "forcibleness"; but if he does so, punishment is not applied to him.

The slandered may forgive his slanderer before the case is reported to the ruler or his deputy, or after that if the slandered wants to keep the matter not exposed, as when he fears that publicity may lead to appearance of evidence of what he was slandered of, or questions such as 'why was prescribed punishment applied to so-and-so?' are raised and be answered 'Because he had slandered so-and-so', the fact which may help publicize the matter and give way to gossip,.. etc.'

Then he said, the conditional clause "..if he wants.." indicates that the slandered, is decent and righteous, neither fears appearance of evidence for slanderer's allegation, nor people's talk about him if the slanderer is punished by the prescribed provision, so slanderer may not be forgiven after the matter has been referred to the ruler.

In the conditional clause "If he wants to keep the matter not exposed.." if the slanderer is father, mother or grandfather they are excepted and the slandered may, then, forgive even if he does not want to keep the matter not exposed. Forgiveness and intercession as regards discretionary punishment are permissible even after referring the matter to the ruler.

This apparently means: ---even if discretionary punishment is solely for the right of Allah, glorified be He (15).

"Mughni Al-Muhtaj" - Vol. 3 p. 373 - states: A husband may slander a wife of his if he is aware - i.e. has verified - of her adultery by seeing her committing adultery, or by definitely believing - to the extent that he then knows - that she has done so, as when her committing adultery with so-and-so, based, on a presumption, becomes known by seeing them alone, even home, or him leaving hers; or if he is informed by a trustworthy person of her adultery, or she tells him and he believes her deep in his

heart; or if he is so apprised by an eye-witness who, though not of moral integrity, is trusted by him...

Husband is, then, allowed to slander his wife... But it is better as in "Zawa'id Al-Rawda" not to expose her, and divorce her if he hates her as this is advisable so as not to expose a sinful act and give another chance to someone who has slipped.

All this when there is no child to disown.

But if a child is involved; this is mentioned when he says "If she has a child that is possibly by him, and he learns or positively believes, that he could not have begot it, he must disavow it; for non-disavowal affirms paternity and attribution of one who is not by him is impermissible exactly as disavowal, of one who is by him.

Al-Baghawi says "If he is absolutely certain, however, that she has committed adultery, he should slander her then take the Oath, or else he is not to slander, since it is possible that the child is the result of a coitus suspected. The manner in which the act of slander is uttered, as suggested by Al-Zarkashi, is to say: This child is not by me, it is by someone else.

He has generalized cases and conditions in which it is necessary to disavow child and mother if he is apparently attributable to husband. According to Ibn Abdulsalam's rules, if the wife has a child whom the husband knows that it is not by him, and she does this covertly so that he, as per legal consequence, is not attributable to him, disavowal is, then, not necessary.

He is not bound insofar as permissibility of disavowal or slander are concerned to know the reason which permits them, such as seeing an act of adultery, exoneration and the like. He knows that the child is not by him if he has never slept with her, or slept with her, yet she gives birth to it in less than six months from date of coitus - that is the least period for delivery a mature baby; or in more than four years which is the maximum period for gestation and coitus should be taken to mean insertion of semen. If she gives birth at a date between these two periods i.e. between six months and four years from the date of coitus and later she did not have a menstrual period, disavowal by means of Oath taking is, then, forbidden for the sake of preserving the marriage "bed".

A doubt he feels (as to whether the child is his own) is of no consequence here. According to Abu Hurraira, the Prophet, said:

"If a man disavows his own son while looking at him, Allah will be veiled from him on the Day of Judgment, and will shame him in front of all His creatures".

(Related by Abu-Dawud and Al-Nesa'i and others).

The prescribed provision for slander is conditional on "legal capacity" as Shafi'ites (16) indicated; no punishment is, thus, applicable to a child or an insane person owing to being unanswerable for their acts and because no harm is inflicted by their act of slander; and, on freedom of choice, for no punishment is applicable to one who is forced for then he is not responsible, and due to non-existence of intention to harm since he has been under duress; it is also not applied to one who executes the act of forcing...

And on abiding by provisions, being cognizant of impermissibility, non-obtainment of slandered and not one of the fundamentals of Fiqh.

The slandered should be one who is chaste and free i.e. he should be legally capable, free, a muslim and chaste with no previous indictment for adultery; as either when he has not done it in the first place or has but it is not a kind of coition for which he should be subject to prescribed punishment, such as a partner to a commonly-owned slave-girl having coition with her. Anything contrary to the aforesaid conditions is deemed a defect.

When slanderer says to a son of another person, "you are not the son of so-and-so, it will be an evidence of slander against the son, since he is not responsible to discipline another person's son. It is, however, argued that such an expression is metonymically used; except for one whose paternity has been disavowed through Oath-taking and has not been attributed by the Oath-taking father, it is not deemed an outright slander of his mother for it is probable that he means to say "you are not legitmately his son" or "you are not like him morally and physically". She may call him to take oath that he has not meant to slander her. If he rejects doing so and he swears that he has meant to slander her, he is subject to punishment. But if he takes the oath that he has not wanted to do so, the prescribed provision is not applied to him; yet he is subject to discretionary punishment (17) for causing harm.

Hanbalites:

Al-Rawd Al-Muraba' - Vol. 1, p. 347 - states: "If one who has legal

capacity and choice slanders, even by a gesture, one who is chaste and free, even the magboub, or a woman who has with her one in a degree of consanguinity precluding marriage, or a woman who is "ratqa" (suffers failure of conalization of lower genital tract, he is to be flogged eighty lashes if he is a free person, for Allah, glorified be He, says:

> *AND THOSE WHO ACCUSE CLEAR WOMEN AND THEN BRING NOT FOUR EYE-WITNESSES, SCOURGE THEM WITH EIGHTY STRIPES.*

Slandering the one who is neither chaste nor free necessitates discretionary punishment against the slanderer as a deterrent from marrying the good repute of the impeccable. The prescribed punishment is a right of the slandered; it is dropped when he forgives and is not applied except upon his request. "The chaste and free" is a person who is free, a Muslim apparently, not convicted for fornication - (even if he has turned penitent from it) - and an abider by the rules, who intercourses with a match., a ten years old male and a nine years old female. Pubescence is not stipulated.

Explicit slander is such expressions as: "you, adulterer", "you, sodomite" and the like. Inexplicit slander is: expressions such as "you, whore", "you, harlot", "you, debauchee", "you have disgraced your husband or brought him shame),... or expressions similar to these such as "you have tarnished his bed"... That is if he does not indicate, before uttering such expressions that he does not mean to slander. He, however, is to be subject to discretionary punishment.

Results of this study

From the preceding juristic review, the following findings become clear:

a) The slanderer of a person who is chaste and free - man or woman - of fornication, is asked to prove the act of fornication in accordance with the Sharia procedures.

   If he fails to substantiate his accusation, he is subject to the prescribed punishment when the terms and conditions necessary for application are available.

   If any of the criteria is not fulfilled, it is necessary to apply discretionary and disciplinary punishment to him to deter him from tarnishing the honour of people beyond suspicion. Hanbalites, however, maintain

that the prescribed provision is necessarily applicable even if the slandered is not capable of committing fornication, as it is the case when the slandered is a "magboub" man or a "ratqa" woman.

This opinion is contrary to that held by the Malikites and Hanafites who makes application of the said provision conditional on capability of committing fornication - Accordingly, one who slanders a magboub man or the like, or a "ratqa" woman or a female with a similar case, is not subject to the said provision, since it is improbable that they should commit fornication -

b) If the slanderer fails to prove the act of fornication he is necessarily subject to the prescribed punishment (i.e. eighty stripes) if the conditions necessary to apply such provision are tenable. If not, the slanderer is to be subject to discretionary and disciplinary punishment.

c) A child's paternity is attributed to the husband unless he takes the Oath or disavow him-as previously stated.

d) Disavowal of paternity is not predicated on surmise, accusation, suspicion or assumption, but must be based on firm belief.

e) It is sufficient to attribute the child to the husband when he sees his wife pregnant or knows of her giving birth to it. Paternity is not disavowed except through him by means of Oath-taking or negation of attribution, unless a lawful, rational or natural inadmissibility, that prevents such attribution, exists.

f) Refraining from exposing matters touching people's honour is desirable and required by Sharia as far as possible.

According to Abu-Hurraira, the Prophet said:

"He who does not expose a Muslim, Allah will not expose him in this World or in the Hereafter".

According to Abdullah Ibn Omar, the Prophet said:
"He who does not expose a Muslim, Allah will not expose him on the Day of Judgement".

(Agreed upon).

Ibn Abbas - reports a Hadith saying:

"He who does not expose the private part (or weaknesses) of

his brother, Allah highly exalted be He, will not expose him in this World or in the Hereafter".

(Related by Ibn Maja).

And in another account,

"He who sees a "Private part" and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life"

(Related by Abu-Dawud, Al-Nesa'i and Al-Hakem on the authority of Uqba Ibn Amer).

g) An observer of Islamic jurisprudence notices that it always tends to proving attribution of kinship, either by means of the "bed", and by admission insofar as the generally known fact stands as an evidence to and not against it, as the case is when it is not improbable that such a child is fathered by him, and that attribution to him is thus not rationally rejected; or attribution to someone else is a matter not known, and so it is not rejectable Sharia wise.

If the one who admits attribution is a woman, her admission must be confirmed by her husband since this means attribution to him, since when speaking for oneself, the one who admits must be given credence by one who will bear the consequences of admission.

"Al-Ikhtiyar" - Vol. 2 p. 32 states:

It is acceptable that man avows child, parents, wife or manumitted slave if they confirm him, in case child can speak for himself, and attribution is not confirmed simply with his claim, in view of consequences attached to it such as establishment of kinship and making alimony obligatory in case of divorce.

Admission made by wife is also acceptable except in matters concerning attribution of child; for this is dependable on confirmation by husband or testimony of midwife.

The point is that confirmation of such admission by one for whom it is made is basically required as a prerequisite condition to acceptability so that it is taken as a proof against him and so he is bound to confirm to prescribed provisions on the basis of mutual admission and the possibility that child is by him so that it is not rationally rejected, or attribution to someone else is a matter not known, and so it is not rejected sharia wise.

Admission made by the wife needs to be confirmed by her husband since this means attribution to him. Accordingly, it is not acceptable except with his confirmation or according to an evidence which is the testimony of the midwife.

If admission made by those is acceptable, he is not to revoke it because when paternity is established it is not invalidated by revocation.

He may retract if one whose attribution is not confirmable is admitted, such as kinship of those other than one's progeny as he is just a guardian conventionally but attribution without kinship of progeny is invalid by avowal, as it will mean attribution to others. A brother's attribution is to father, an uncle's to grandfather, and so on...

"Mughni Al-Muhtaj" Vol. 2 p. 229 states: 'Admission of attribution, i.e. kinship, is of two kinds; the first of which is attribution made to oneself, and the second is that made to others. In the first case if a person of age who is a sane male, even if he were a slave, infidel and a spendthrift avows attribution of someone else, if he made it to himself by saying, for instance, This is my son or "I am his father"... then there are certain prerequisites to acceptability of such attribution: that it is not rebuttal by the factor of age, i.e. child is of an age at which it is possible that the child is by him. And it is not rejectable by Sharia in that rejection is on the basis that attribution is already known to belong to someone else or born on a valid "bed". And Thirdly: that his claim is confirmed by the one attributed if he is so qualified, and that he was not disavowed by others who took the Disavowal Oath for a sound marriage "bed". If the matter is so, attribution is not valid except to the party disavowing him but when he attributes kinship to someone other than himself, as by saying "This is my brother" or "This is my uncle", kinship is confirmed to the one to whom he is attributed upon the conditions previously stated provided that one to whom kinship is attributed, is dead and the one who admits is an heir to him and possessing his inheritance. The more correct opinion is that the one who is attributed is not to inherit nor share him who admitted in his portion, and that the one who is of age among legatees is not to make admission single handedly.

As to the Hanbalite, it is stated in "Al-Rawd Al-Murabba" - v. 2 p. 379: "If someone admits filiation of a young child or an insane person whose kinship is unknown, as to being his son, his attribution is thus affirmed, even if it leads to disinheritance of a recognized legatee, since the one who admits is not discredited with his admission for the inheritor has no

immediate right. If the one who is admitted is dead, the one who admitted filiation inherits him.

Conditions for admission of filiation are: Credibility of the one who makes admission, that he does not negate, by his admission, kinship of someone who is known to be already attributed to someone else, and if one whose attribution is admitted enjoys legal capacity, he is also to be held truthful.

The Hanafites have a precise analysis for the "bed" with which attribution is confirmed:

"Rad Al-Muhtar" - Vol. 2 p. 647 states: "Bed" is divided into four classes:

Weak: That is the bed of a slave-girl paternity for which is not established except by a legal action.

Average: It is the "bed" of a boy's mother where paternity is established without legal action but is negated by disavowal.

Strong: It is the "bed" of a wife and of one who is divorced but revocably without remarriage. Paternity, in this case is not disavowable except by Oath-taking.

Stronger: Like the "bed" of the divorced wife who is revocable by remarriage. Here the child is not disavowable in the first place since disavowal is dependent on Oath-taking, and marriage is a prerequisite condition for such Oath.

⋆ From this we see that it is not a trifling matter to vilify other's kinship, accuse them of fornication, or to use other similar means of defamation.

The Wise Legislator threateningly warned those who like evil to prevail among those who have believed. He said,

> *VERILY THOSE WHO LOVE THAT INDECENCY WOULD BE PROPAGATED AMONGST THOSE WHO BELIEVE, FOR THEM SHALL BE A TORMENT AFFLICTIVE IN THE WORLD AND THE HEREAFTER, AND ALLAH KNOWETH AND YE DO NOT KNOW,*
>
> *(S24:V20)*

He has also cursed those who defame chaste women. He and Highly Glorified, said

> *VERILY THOSE WHO ACCUSE CHASTE, UNKNOWING, BELIEVING WOMEN, SHALL BE CURSED IN THE WORLD AND THE*

HEREAFTER, AND FOR THEM SHALL BE A TORMENT MIGHTY

(S24:V33)

Lastly, there is one important point that must be reviewed, namely the question: If an unmarried woman, or one who is married to a husband unable to father a child, being a boy for instance, is found pregnant ..; should she be subject to the prescribed provision of fornication or adultery on the basis that such a pregnancy is a presumption for felony of fornication or adultery committed by her?

To answer this question I say: jurists' opinions have differed as regards the type of provision that should be applied to such a woman who has not made a confession to committing fornication, or adultery nor all the prescribed four witnesses available to testify to her committing this, nor does she provide a doubt that prevents application of the prescribed punishment. Some jurists see that the provision applicable to this woman is that of fornication or adultery. This opinion is ascribed to Omar, and to the Malikites (18), as well as to an account by Ahmad. They deemed pregnancy a presumption enough to apply the provision to her, just as evidence (witnesses) and confession. They cited as evidence the Hadith related by Ibn Abass, from Omar Ibn Al-Khattab,

> *"the verse of stoning was included in what Allah sent down. We recited it, retained it in our memory and understood. Allah's Messenger awarded the punishment of stoning to death (to the married adulterer and adulteress) and, after him, we also awarded the punishment of stoning. I am afraid that, with the lapse of time, the people may (forget it) and may say: we do not find the punishment of stoning in the Book of Allah, and thus go astray by abandoning this duty prescribed by Allah. Stoning is a duty laid down in Allah's Book for married men and women who commit adultery when proof is established, or if there is pregnancy, or a confession".*

(Related by all "Al-Jama'a except Al-Nesa'i)

The verse of stoning is

AND THE MARRIED MAN AND THE MARRIED WOMAN STONE (TO DEATH) THE ONE WHO COMMITS ADULTERY, THIS SHALL ALWAYS BE (9)

It was superseded as a verse, yet its Qur'anic provision has remained effective. They also cited the story of the woman who was brought before

Othman, for giving birth after six months from the date of marriage. When he ordered her to be stoned, Ali, may Allah be pleased with him, put in 'you have no right to doing so, for Allah says:

> *AND THE BEARING OF HIM AND THE WEANING IS THIRTY MONTHS*
>
> *(S46:V15)*

and He says

> *AND MOTHERS SHALL SUCKLE THEIR CHILDREN TWO WHOLE YEARS: THIS IS FOR HIM WHO INTENDETH THAT HE SHALL COMPLETE THE SUCKLING*
>
> *(S2:V223)*

Quoted by Malik in "Al-Mu'watta" (20). This indicates that Othman and Ali, saw that it was necessary to apply the prescribed provision due to "Pregnancy". But the reason that prevented application to that woman was the fact that the minimum period for pregnancy, as it is consensusly agreed upon, is six months - and that woman was pregnant for this period.

Ali, may Allah be pleased with him, was quoted as saying

> *"O people adultery (or fornication) is of two kinds, covert and overt, the covert is when witnesses testify and consequently they are the first to cast the testify and consequently they are the first to cast the stones, and the overt when pregnancy is noticed or the woman confesses and here the Imam is the first to cast the stones" (21).*

The Majority of jurists are of the opinion that mere pregnancy is not enough for application of the prescribed provision. Confession or evidence (witnesses) are obligatory. They cited the Hadiths that refer to the principle "No penalty on suspicion" already stated.

They also cited the Hadith narrated on the authority of Al-Nazzal Ibn Sabra:

> *"while we were in Makkah we found a woman surrounded by people who were about to kill her and saying: she committed fornication, she committed fornication. She was then brought before Omar Ibn Al-Khattab, and was pregnant. Her folk came with her and well praised her. "Tell me, what is your story". She said, "O commander of the Faithful, I am a woman and I used to offer prayers at night, one night I prayed then*

slept and was awaken by a man between my legs, he ejaculated like a shooting star and then went away". Omar said: if those who are between the two mountains - or said the two big rough mountains - killed this woman Allah would torture them. Then he released her and wrote to the outreaches: Do not kill anybody except after my own permission".

(Quoted by Al-Baihaqi).

This shows that Omar, accepted the woman's statement without asking her for evidence. And he did not take pregnancy alone as a presumption necessitating application of the prescribed provision, and he spared her the penalty.

Al-Shukani commented on the statement reportedly said by Omar Ibn Al-Khattab, "if there is evidence, pregnancy or confession" by saying: 'this is of Omar's own statement.

And such is not a sufficient proof upon which a legal consequence on such a fatally grave matter is based. The fact that he uttered this in the presence of the companions without any disapproval does not mean that it is an ijma' (consensus held opinion), as I explained more than once through this commentary, for disapproval in questions pertaining to independent reasoning is not binding, particularly when the speaker is Omar who was regarded with awe by the companions as well as by others. This is the case except if he claimed that his statement "if there is evidence, pregnancy or confession" was by way of expounding what he cited of The Book of Allah. But this is not apparently the case since what is stated in The Book of Allah, is as I have stated at the beginning of the Book of Al-Hedoud (He means confession and evidence - the four witnesses).

The more acceptable opinion is that pregnancy alone does not stand as a presumption of application of the provision itself in these present cases. Nevertheless, if the prescribed provision is eliminated, it is possible to resort to discretionary, punishment if proved obligatory, or else it is not used and child kinship is attributed to the mother.

With regard to our present case, namely the one inquired about: A married woman found pregnant whereas doctor decides that her husband is incurably sterile. Should her case be analogous to one who is married to boy less than nine or ten years old - as previously stated - and thus the legal consequence on her case is subject to the aforementioned controversy, and, therefore, we accept for it the opinion we have earlier

accepted? But should the doctor stay with arms folded before this case? The doctor, I believe, should inform the husband who had been examined, and about whose incurable sterility the doctor is absolutely certain, of his condition so that he is aware of and consequently handle his issue in the way that he deems suitable.

The manner, time and way in which the husband is informed is left to doctor's discretion, the patient, however, must get a clear picture.

By informing him, the doctor will:

First:

have fulfilled his trust, for the patient has not visited him except to be treated of his illness and in order to know the disease and the remedy. So, the doctor must fulfill his trust and perform his duty especially that the husband and his future, in so far as health state is concerned, are now put in his trust.

Second:

have done the duty of "advice" which every Muslim is asked to do for his brother - as we explained - "Religion is advice...."

Third:

have prevented a vile deed from taking place. If this patient is unmarried, he will think a thousand times before deciding to get married. And if he is married, he will be careful and on guard against himself and his spouse and take the decisions he considers appropriate towards his wife and her pregnancy if there are any. If matters escalate and the doctor is asked to testify, he must do it fully.

> *AND HIDE NOT TESTIMONY; AND WHOSOEVER HIDETH IT, HIS HEART VERILY IS SINFUL*
>
> *(S2:V283)*

The nation of Islam is undoubtedly a community that commands what is reputable and prohibits that which is disreputable. Hence it is the best community sent forth unto mankind. Doctors have shut a door which if left opne a great evil might take place.. They have been trustworthy counsellors, calling for what is reputable and prohibiting what is disreputable.

The doctor, by doing this, will have not disclosed a secret, neither vilified a person's honour nor subjected himself to harm inflicted by others or by himself.

Second Inquiry

If a doctor does an act that is in contravention of the ethical rules of the profession and it is discovered by a colleague; should the latter inform about him and thus disclose a secret?

The question clearly indicates that this doctor's act is unlawful, either because it is prohibited by Sharia or forbidden by the ruler who is entitled to prohibit some permissible things if they are deemed detrimental. According, the answer to this question requires explaining the judgment of Sharia for one who sees something disreputable; should he first prevent it or not?. It also requires the method prescribed by the Sharia for prevention of disreputable things, as well as ways in handling such matters which disturb the march of what is good in the society.

I will discuss these two subjects in the following:

"Explanation of Prescript of Sharia for".

and

"Whoever Witnesses a Disreputable Act".

First:

Many verses in the Book of Allah, Hadiths by the Messenger of Allah, and traditions of the companions, and followers based on these two munificent sources, having referred to calling for what is reputable and prohibiting things that are disreputable, and stated that these qualities of the nation of Muhammad, may the blessings and peace of Allah be upon him, to mention but a few:

Allah says:

AND LET THERE BE OF YOU A COMMUNITY CALLING OTHERS TO GOOD AND COMMANDING THAT WHICH IS REPUTABLE AND PROHIBITING THAT WHICH IS DISREPUTABLE. AND THOSE! THEY ARE THE BLISSFUL

(S3:V104)

And He also says:

YE ARE THE BEST COMMUNITY SENT FORTH UNTO MANKIND. YE COMMAND THAT WHICH IS REPUTABLE AND YE PREVENT THAT WHICH IS DISREPUTABLE, AND YE BELIEVE IN ALLAH

(S3:V100)

Stating that this quality, namely the quality of commanding what is reputable and prohibiting what is disreputable, is the quality of the faithful He, the highly glorified, says

AND THE BELIEVING MEN AND BELIEVING WOMEN ARE FRIENDS ONE UNTO ANOTHER: THEY COMMAND THAT WHICH IS REPUTABLE AND RESTRAIN FROM THAT WHICH IS DISREPUTABLE, AND ESTABLISH PRAYER AND GIVE THE ALMS AND OBEY ALLAH AND HIS APOSTLE. THOSE! ALLAH WILL SURELY SHOW MERCY TO THEM; VERILY ALLAH IS MIGHTY, WISE)

(S9:V71)

And, referring to the opposite as being the quality of hypocrites, He says:

THE HYPOCRITICAL MEN AND THE HYPOCRITICAL WOMEN ARE ALL OF A PIECE; THEY COMMAND THAT WHICH IS DISREPUTABLE AND RESTRAIN FROM THAT WHICH IS REPUTABLE AND, THEY TIGHTEN THEIR HANDS. THEY NEGLECTED ALLAH, SO HE HATH NEGLECTED THEM. VERILY THE HYPOCRITES! THEY ARE THE UNGODLY ONES

(S9:V67)

There are also numerous Hadiths that refer to this; here are some:

Abu-Said Al-Khudariy, said 'I heard the Messenger of Allah, may the blessings and peace of Allah be upon him, saying

"He who amongst you sees something abominable should modify it with the help of his hand; and if he has no strength enough to do it, then he should do it with his tongue and if he has no strength enough to do it (even) then he should (abhor it) from his heart, and that is the least of faith".

(Related by Muslim).

According to Abdullah Ibn Mas'ud, the Messenger of Allah said:

"Never a Prophet had been sent before me by Allah towards his nation but who had among his people (his) disciples and companions who followed his ways and obeyed his command. Then there come after them their successors who said whatever they did not practice, and practised whatever they

did not practice, and practised whatever they were not commanded to do. He who strove against them with his hand was a believer; he who strove against them with his tongue was a believer, and he who strove against them with his heart was a believer and beyond that there is no faith even to the extent of a mustard seed".

(Related by Muslim (Al-Mukhtassar: Hadith no. 35)).

Therefore, commanding what is reputable and prohibiting what is disreputable are amongst the most intrinsic qualities of believers according to some texts of the Book of Allah and, the Sunna of His Messenger, may the blessings and peace of Allah be upon him.

Second:

Prescript for commanding what is reputable and prohibiting what is Disreputable!

The fact that this is enjoined on every Muslim has been confirmed by the Book of Allah and the Sunna of his Messenger.

If it is an obligation, is it a religious duty enjoined on every Muslim, as some jurists maintain? If so, then every individual person must do it as far as one can, just like the duty of pilgrimage in that one is not freed from doing it when performed by another whether they are in the form of government or any group or individuals, be they scholars or ignorant. Rather, it must be undertaken by every single individual Muslim when he can do it. In this case the verse

AND LET THERE BE OF YOU A COMMUNITY..

has been figuratively specific, and thus it actually means: the whole community must be called to this, and the whole of it must perform it; just as the verse

HE SHALL FORGIVE YOU OF YOUR SINS

means: He shall forgive you (all) your sins.

Or it is a collective obligation, as some other jurists maintain (a religious duty incumbent upon the entire Muslim nation) - i.e. if it is undertaken by some, others are freed from it, and if none undertakes it, all people are held responsible for the sin just as duty of Al-jihad (holy war). If the case is so the word "of" in the verse

AND LET THERE BE OF YOU A COMMUNITY..

indicates "some" - and it so does. This means that some are to undertake commanding what is reputable and prohibiting what is disreputable and others are not, the fact which indicates that it is a collective obligation which, apparently, is the case.

It is apparent and more acceptable because the one who commands what is reputable and prohibits what is disreputable should posses certain qualities which qualify him to that, and this is agreed by consensus for in order to determine what is reputable and what is disreputable one needs a certain amount of knowledge just as executing it needs some sort of control, discipline, ability and protection.

Jurists have elaborated on explaining conditions - their opinions differing in some of them - which must be found either in one who undertakes commanding and prohibiting - such as legal capacity, belief, ability, justice (according to some) and permission of ruler (Imam), or in the disreputable thing that is prohibited such as stipulation of its existence at the time of executing prohibition and being apparent, or in the way with which the perpetrator is prevented from it.

> *CALL THEM UNTO THE WAY OF THE LORD WITH WISDOM AND GOODLY EXHORTATION, AND ARGUE WITH THEM WITH THAT WHICH IS BEST*
>
> *(S16:V125)*

Al Qurtubi says, "and commanding what is reputable cannot be undertaken by anyone. It is done by the Sultan (ruler) if the administration of prescribed provisions is within his power, and if discretionary correction is determined according to his opinion, and if imprisonment, release, existing and banishment are for him to decide. He, then, installs in each town a righteous, strong, learned and honest man and authorizes him thereof and enforces the prescribed provisions without excess.

Allah, glorified be He, says

> *THOSE WHOM IF WE ESTABLISH THEM IN THE EARTH SHALL ESTABLISH THE PRAYER AND GIVE THE ALMS AND COMMAND THAT WHICH IS REPUTABLE AND RESTRAIN THAT WHICH IS DISREPUTABLE, AND UNTO ALLAH IS THE END OF ALL AFFAIRS*
>
> *(S22:V41)*

"Muslims, according to what Ibn Abdulbar stated, have by consensus been of the opinion that what is disreputable must be corrected by

whoever has the ability to do so. And that, if he will incur, by so doing, no harm except blame, he should not refrain from correcting it. If he cannot do it physically, he should try to change it with his tongue. If he cannot, he should do it with his heart, and that is the least he is required to do. If he denounces it with his heart, he will have done what he could, for not being able to do more than that... Hadiths attributed to the Prophet which stress commanding what is reputable and restraining what is disreputable are so numerous but they are restricted to being able to do that (23) he further added.

In his commentary (24) of the verse,

AND LET THERE BE OF YOU A COMMUNITY CALLING OTHERS TO GOOD..

Abu Bakr Al-Gassas says "this verse has contained two meanings: one of which is the necessity of commanding what is reputable and restraining what is disreputable, and the other is that it is a collective duty and it is not a duty that is enjoined on every individual if others should undertake it, for Allah says

AND LET THERE BE OF YOU A COMMUNITY,

which in fact means "some" and not "all" indicating that it is a collective duty on the pan-nation if undertaken by some the rest are freed from it..

This verse and other similar verses necessitate commanding what is reputable and restraining what is disreputable. This is effected firstly with hand if it is possible. But if it is not possible and one fears that he may incur harm upon himself if he denounces it physically, he should do this with his tongue. And if he is unable to do this for the reasons previously stated, he should condemn it with his heart he further added.

And as to the verse

O YE WHO BELIEVE! ON YOU RESTETH THE CASE OF YOURSELVES; IT CAN HURT YOU NOT AS TO WHOSOEVER STRAYETH SO LONG AS YE KEEP YOURSELVES GUIDED

(S5:V105)

By way of commentary on this verse Abu-Dawud narrated on the authority of Ismail Ibn Qais Ibn Abi Hazem, he said: Abu Bakr said *"O people! I see that you read this verse and misplace it":*

..ON YE RESTETH THE CASE OF YOURSELVES; IT CAN HURT YOU NOT AS TO WHOSOEVER STRAYETH SO LONG AS YOU KEEP YOURSELVES GUIDED.

I did hear the Messenger of Allah, may the blessings and peace of Allah be upon him, saying:

> *"If people see the oppressor themselves and did not reprehend him, then they might all be afflicted by a punishment from Allah" (25).*

Hence, we clearly see that it is necessary to reprehend that doctor who does act contrary to the ethical rules of the medical profession. These morals, as we all know, aim at protecting Man's health, warding off anything that may expose him to diseases and hazards and endeavoring to remove pains of all people in a sympathetic, intimate, loving and honest spirit. If he behaves contrary to that, he is, then, perpetrator of an illicit act. Hence it is necessary to command what is reputable and restrain what is disreputable as we are ordered to do by the Wise Legislator. I suggest that it should be done as follows:

Sharia's Method in Removing Disreputable Things

When explaining this method we must first and above all consider what Allah says,

> *CALL THEM UNTO THE WAY OF THY LORD WITH WISDOM AND GOODLY EXHORTATION, AND ARGUE WITH THEM WITH THAT WHICH IS BEST*
>
> *(S16:V125)*

This is the method for the "call", for addressing people and for advising them..

The doctor who acts in contravention of the rules of the profession and whose affair is discovered by a colleague who is quite certain of the breach done, the case, I think, should be handled as folows:

First:

We resort to advice.

Advice is a right of eveery Muslim toward his brother Muslim as prescribed by the munificent verses and Prophetic Hadiths among which are:

According to Tamim Al-Dari the Prophet said,

> *"Religion is advice. Upon this we said: For whom O*

Messenger of Allah? He replied: for Allah, His Book, His Messenger, and for the Muslim leaders and the general Muslims".

(Related by Muslim and Al-Nesa'i.)

The latter's version is

"Religion is nothing by advice".

It is also related by Abu-Dawud whose wording runs as follows

"Religion is advice, Religion is advice, Religion is advice".

It is also related by Al-Termizi on the authority of Abu-Huraira with the same repetition he rated its authenticity as "approved". Huzaifa Ibn Al-Yamman, said "The Messenger of Allah, said:

"He who does not care about Muslims is not a Muslim, and he who is not night and day advising for Allah, His Messenger, His Book, his leader and, the general Muslims is not a Muslim".

(Related by Al-Tabarani on the authority of Abdullah Ibn Abi Jafar) (26).

A. If he is a friend of his, his advice should be direct. If he is not and the colleague knows a friend of the perpetrator, he asks this friend to undertake the act of advice.

B. If he does not respond positively at the first attempt, he repeats advice indicating - or tacitly threatening - that such matters should not be given a blind eye or kept hidden owing to public harm, besides personal damage, that results from such an act. The Hadith of the Messenger of Allah, says:

"Without harming and without mutual harm".

So, every harm must, lawfully and rationally, be removed.

C. Thirdly the matter must be referred to authorised parties to take measures that prevent him and those like him from such discreditable acts.

Reporting such is both a right and a duty on whoever gets to know the matter; after the steps of advice and implicating - then expressly stating - to report the matter to authorities are exhausted, in order that the society is spared vile deeds and cleansed of impurities, especially when bearing in

mind what I have previously stated of the necessity of commanding that which is reputable and prohibiting what is disreputable, and what, Abu Bakr, may Allah be pleased with him, warned of, as I have also mentioned.

This method and the resultant reporting to authorities, has, I think, nothing to do with secrets that the doctor is forbidden from disclosing. Concealment of something harmful is also harmful; and giving a blind eye to a sin being committed is a sin as well - The person in charge or the ruler, in such a situation, is like a father. If we do not report his sons' conduct to him, they deviate and it becomes diffult to discipline them and their evil deeds spread and thus they ruin themselves as well as their father 27...

Hence Islamic jurisprudence has been concerned with explaining the attitude of the state in respect of supervising doctors' work, checking their conduct and authorizing whoever will carry this out.

Referring to supervision of doctors' work, Al-Mawardi's "Al-Ahkam Al-Sultaniya" states "And as to the one whose work is to be supervised, both in cases of assiduity and negligence that is he whose job is like doctors and teachers - for doctors have access to lives and negligence on their part results in - damage or disease; and teachers, in the course they follow to educate young children, leave imprints and habits in them that, when they are grown up it becomes difficult to extricate; so he will be allowed to retain in work the one who performs it assiduously and proficiently. If negligent and delinquent he is to be prevented from undertaking a job through which souls are spoilt and morals are besmeared".

A similar purport to this is found in Abu-Ya'la's "Al-Ahkam Al-Sultaniya", p. 302.

Islamic Jurisprudence has also laid down controlling rules for supervision by the state on other people's work - by means of specifying duties of al-muhtasib (now minister of interior). With regard to what he is entitled to check, jurists said: impermissible things are of two types: some are overt and others are not they said: al-muhtasib is not permitted to spy on impermissible things done covertly nor should he try to violate veils lest he disclose secrets. The Prophet said:

> *"He who does such filthy actions, let him be covered by the veil of Allah, for if one discloses what he does, we shall apply the prescribed punishment of Allah to him".*

They also stated that what takes place of them and be known must be subject to the prescibed provision or punishment. Al-muhtasib is obliged to prevent people from being in dubious situations and doing acts that may incriminate them, for the Prophet says:

> *"leave all doubtful things and do what is completely clear of doubt".*

Islamic jurisprudence has also indicated that mentioning the defective qualities of an evil-doer or a transgressor is not deemed backbiting since it is intended to acquaint people with their evil deeds or transgression.

This is the course of action I deem acceptable in this case. And I hope it will fulfill the end we all aim at: Namely to safeguard the medical profession from any misdeed, to protect doctors from any tripping and to preserve positions onto which they are deservedly raised as protectors of man and patrons of health with full honesty and sincerity.

Third Inquiry

The prescript for informing patient's family of a venereal disease

The question:

"If the doctor becomes aware that the father of a family has got a venereal disease, what should his attitude be; should he inform the family or not?

To answer this question I have to explain:

A. "Sharia's attitude towards contagious diseases".

B. "Attitude of the doctor, who knows that a man has a venereal disease, towards informing the family lest they should get the disease".

Contagious Diseases and Sharia's Attitude

Islamic Sharia is concerned with preserving five total things: Namely: religion, life, property, honour and mind. It has fully taken care of each of them and provided each with means of protection and preservation in order to enable people to live peacefully unworried about their religion, lives, honour, property and mind...

And thus the march of mankind is kept ever rich in maturity, enjoying

every renovation, relishing every development, and facing the ever changing events of life with solutions brought forward by a human being whose mind is absolutely at ease as regards all these total things, and with controlling rules it makes within a firm framework and under the munificent Book of Allah and the Sunna of the honest Messenger of Allah, may the blessings and peace of Allah be upon him.

So, caring for human life and preserving it from any evil and providing it with all means of survival and keeping it away from all destruction-entailing things, are objectives enshrined and fully prescribed in the Sharia of Allah, glorified be He.

Allah says:

> *AND SLAY NOT YOURSELVES; VERILY ALLAH IS UNTO YOU IS EVER MERCIFUL*
>
> *(S4:V29)*

And He says

> *BECAUSE OF THAT WE PRESCRIBED UNTO THE CHILDREN OF ISRA'IL: WHOSOEVER SLAYETH A PERSON, EXCEPT FOR A PERSON, OR CORRUPTION IN THE LAND, IT SHALL BE AS THOUGH HE HAD SLAIN ALL MANKIND AND WHOSOEVER BRINGETH LIFE TO ONE IT SHALL BE AS THOUGH HE HAD BROUGHT LIFE TO ALL MANKIND. AND ASSUREDLY THERE CAME UNTO THEM OUR APOSTLES WITH EVIDENCES YET EVEN THEREAFTER MANY OF THEM ARE ACTING ON THE EARTH EXTRAVAGANTLY*
>
> *(S5:V32)*

And here are some of the Prophetic Traditions: the Prophet says:

> *"Man is Allah's Building, cursed is he who demolishes His Building"*

With reference to guarding against contagious disease some jurists have assigned a chapter entitled: "A chapter on guides granted by the Prophet as regards guarding against intrinsically contagious diseases, and his education that the healthy should avoid the contagious".

I think we have better review the attitude of Islam towards such diseases for the purpose of enumerating harms along with means of their treatment:

According to Usama Ibn Zaid the Prophet said about the bubonic (Plague):

"This calamity or illness was a punishment with which were punished some of the nations before you. Then it was left upon the earth. It goes away once and comes back again. He who heard of its presence in a land should not go towards it, and he who happened to be in a land where it had broken out should not fly from it".

(Related by Muslim in his Sahih).

This Hadith clearly indicates that the disease must be kept restricted to the narrowest area and that its spread should be totally prevented.

It also indicates that muslims must abide by these instructions and endeavor to carry them out till evil is removed and the danger posed is put under control.

This is what was understood by the Companions of the Prophet, foremost of whom was Omar Ibn Al-Khattab, and they went back to Al-Madina when the plague spread in Mesopotamia as they were approaching it.

This behavior is established by what Allah says

AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION

(S2:V195)

And in the Verse,

AND SLAY NOT YOURSELVES; VERILY ALLAH IS UNTO YOU EVER MERCIFUL

(S4:V29)

According to Abu-Huraira the Prophet said :

"There is no contagious disease" (conveyed without Allah's permission), nor is there any bad omen (from birds), nor is there any hamah (name of an animal or bird), nor is there any bad omen in the month of safar, and one should run away from the leper as one runs away from a lion".

In another version, a bedouin said:

"O Messenger of Allah, then what about my camels? They are like deer on the sand, but when a mangy camel comes and mixes with them, they all get infected with mange. The

Prophet said: "What infected the first one".

(Related by Al-Bukhari (28) and Muslim).

Ibn Shihab reported that Abu-Salama Ibn Abdulrahman Ibn Oaf told him that the Messenger of Allah, said:

"There is no contagious disease conveyed without Allah's permission"

It is narrated that the Messenger of Allah also said:

"The ill should not go to those who are healthy".

Abu-Salama said: "Abu-Huraira used to narrate these two Hadiths from the Messenger of Allah, but afterwords Abu-Huraira become silent on these words:" There is no contagious disease but he stuck to this that the sick person should not be taken to one who is healthy. Al-Harith Ibn Abu-Dhubab (and he was the first cousin of Abu-Huraira) said: from you that you narrated to us along with this Hadith and the other one also (there is no contagious disease), but now you observe silence about it. You used to say that Allah's Messenger said:

"There is no contagious disease".

Abu-Huraira denied having any knowledge of that, but he said that the sick camel should not be taken to the healthy one. Al-Harith, however did not agree with him, which irritated Abu-Huraira and he said to him some words in the Abyssinian language. He said to Al-Harith: Do you know what I said to you? He said: No. Abu-Huraira said: I simply denied having said it. Abu-Salama said: By my life, Abu-Huraira in fact used to report Allah's Messenger, may the blessings & peace of Allah be upon him, having said: There is no contagious disease. I do not know whether Abu-Huraira has forgotten it or he deemed it an abrogated statement in the light of the other one. Related by Muslim, yet, the narrator, according to Al-Bukhari's account, affirmed that he had forgotten: "Abu-Salama said: We have never experienced him forgetting any Hadith except that one".

And on the authority of Abu Huraira the Prophet said:

"No infection, no hama, no star promising rain, no Safar".

Jabir said "The Messenger of Allah, may the blessings and peace of Allah upon him, said

"No infection, no evil omen, no ghoul". (29)

Here I will tackle what is stated in these Hadiths from two aspects:

Aspect One:

The meaning of words used:

"No Infection", that is no contagion or infection expect with Allah's permission, that is contrary to what was believed in pre-Islamic times that certain specific diseases are intrinsically contagious.

"No Evil Omen", this has its roots in pessimism. In the pre-Islamic period they used to believe that when birds turn the right side toward the viewer to be auspicious signs of good omen, and when birds turn left side toward the viewer to be inauspicious signs of evil omen, and so they would then turn away from doing something due to such pessimism but Islam negated this, nullifying it and making it impermissible.

"No hama", the pre-Islamic Arabs used to believe that the bones of some one who was killed turn into a flying bird. In the Sahihs, the hama is a "night bird" Viz. an "echoing, reverberating bird" and the plural form is "hama". The pre-Islamic Arabs believed that the soul of a man who was killed by another takes the form of a bird and curses over the grave of the dead man crying: Give me drink (of blood), Give me drink (of blood). It keeps crying for days and nights until the blood of the dead man is avenged by a member or members of his family or tribe. It was also said that the hama is the owl, if it alights on the house of any of them, he considered the owl wailing him or someone of his folk, and Islam came to nullify all this as mere superstition, and made such things impermissible.

"No Safar", this is the month known in the Arab Calendar, and the idolatrous Arabs used to feel pessimistic when it comes. In Sunan of Abu-Dawud from Muhammad Ibn Rashid: They used to feel pessimistic when Safar came as they believed it entailed calamities and seditions after the end of the month of Muharram during which fighting was prohibited and impermissible, so if they were forced to fight during Muharram they made the month permissible and called it Safar and the one after was then Muharram. This is the postponement or intercalation referred to in the Qur'an. Consequently "Safar" became a symbol of evil and the Arabs looked upon it pessimistically. It was also said that al-Safar is a snake like worm in the bellies of people which becomes furious when hungry and perhaps would kill one by biting and stinging, and the Arabs used to consider it more contagious than mange or scab. Consequently, the Prophet Messenger of Allah, forbade this by saying, "No safar".

"No Star Promising Rain". Mokhtar Al-Sihah explains the Arabic word for which equivalent meaning is here given as: "al-nau'" is the fall of a star from the orbits in the West at dawn and the ascent of the corresponding one from the East, in a corresponding time every thirteen days, except the frontline for which there are fourteen days, the Arabs used to attribute rain, wind, heat and coldness to the falling stars, and to their the ascending, it was said, as this is within their power". Islam then came to state that this is a mere myth, nullify it and make it impermissible. "No ghoul", that is a kind of "female demons", the plural forms are "aghwal" and "ghilan". The root verb is used in Arabic to mean that which is perditious to man. The Arabs used to claim that the ghouls lived in waterless deserts, and that they were a certain race of devils which came and manifested themselves to people and assumed different colours, and so lead people astray and destroyed them. The Messenger of Allah, may the blessings & peace of Allah be upon him, nullified all this as groundless.

Al-Taibi said: concerning the negative word "No": In Arabic its location here (in the Hadith) is syntactically worth-noting. The word is used to negate nouns in a grammatically non-conforming way in Arabic unless the meaning is taken as figurative which is more stylistically articulate.

Aspect two:

How to understand the Hadith in the light of the account in question i.e.

"No Infection..." and "run away from the leper..."

and, what Al-Teermizi related on the authority of Abdulla Ibn Omar that the Prophet took a leper's hand and put it down into the bowl he was eating from saying

"Eat in the Name of Allah, Trusting in Him and relying on Him".

This is also related by Ibn Maja on the authority of Jabir Ibn Abdullah, may Allah be pleased with them.

An examiner of these Hadiths must emphatically state that:

— There is no inconsistency nor any contradiction in these Hadiths, if we suppose they are authentic. If there is any inconsistency, then either one of the two inconsistent Hadiths was not uttered by the Prophet and was mistakenly reported by a narrator, despite being trustworthy and reliable, or one of the two Hadiths had superseded the other, and in this case we must find out the date of each Hadith in order to determine which

superseded which.. And Allah forbid that a contradiction be in the speech of he who speaks not of his own desire, but of a revelation revealed.

— As to the authenticity of the Hadiths, being strong a weak, the narrator stated that Abu-Huraira forgot what he had already related of the Prophet's Hadith

"No Infection"

and used to recount only the Hadith

"The ill should not go to those who are healthy",

as we already stated.

— As to the Hadith related on the authority of Jabir and Abdullah Ibn Omar that the Prophet held a leper by his hand.., it was classified as "cannot be authentic nor sound". Al-Termizi eventually termed it as "strange"; he neither deemed it "sound" nor "approved" Shu'ba and others said 'Beware of these "strange" traditions'. Al-Termizi said, "It is narrated that this was an act done by Omar", and he is a better authority - then it is a defective Hadith.

Muslim related on the authority of Al-Sharid, said, "There was in the delegation of Thaqif a leper. Allah's Messenger, may the blessings and peace of Allah be upon him, sent a message to him: We have accepted your allegiance, so you may go".

From this we conclude:

A. The Prophet's statement

"The ill should not go to those who are healthy"

is a correct Hadith and it does not contradict his statement,

"No Infection"

in some accounts that joined them in one Hadith "No Infection.. The ill should not..", It, otherwise, explains the meaning of the Hadith "No Infection" in the account that did not include "The ill should not go to those who are healthy" and this meaning is:

B. Negating "infection" by a negative word means that there is no disease which can intrinsically infect. It aimed at rebutting the false idea commonly held in the Pre-Islamic times that diseases infected by themselves, without mentioning the will of Allah, glorified be He, in this

respect. The account, which stated that the Prophet had eaten with a leper, if it is correct, is to show that Allah, glorified be he, is He who, in fact, renders sick and it is He who heals

AND WHEN I SICKEN, THEN HE HEALETH ME.

C. Man is asked to act according to what is apparent and not according to what is unknown to him. Prescripts are not tied to what is hidden from us. Rather, they are connected with what is known, uncovered and consequently having controls. Hence the Prophet may have prohibited contacting the leper and forbade that the ill goes to the healthy to show that this is one of causes which Allah made natural to lead to effects. Therefore, the prohibition on the part of the Prophet indicates confirmation of the significance of causes, whereas his action (with the leper) implies that these causes do not function independently, rather Allah, glorified be He, can, if He wishes, divest them of their function rendering them ineffective, or, if He wills, leave them active and thus they become effective.

D. The Hadith,

"run away from the leper as one runs away from a lion"

is a fine expression and highly eloquent statement. It contains things from which we derive some guidance:

1. Leprosy is a contagious disease, so we must keep away from whoever has it for fear of contagion. So eloquently does the Prophet, order us not only to keep away or avoid him but to run away from him as you run away from a lion. And just as you dread a lion and are afraid of being killed, you must dread this disease and fear it lest you should catch it. Therefore, it is necessary to be careful, cautious and fearful of contagious diseases. In this way the nation is safeguarded and its health is preserved.

2. Leprosy is just an example of contagious diseases, so every similar disease should be analogous to it. Jurists maintained that tuberculosis, hectic fever and certain skin diseases are analogous. Any other disease that doctors think is contagious is also analogus to leprosy and aacordingly,

"The ill should not go to those who are healthy".

3. Any patient who has a contagious disease must avoid the healthy so that they are not infected. The healthy likewise must avoid contacting with patients of such a disease so that they do not catch it and thus help

convey it.

4. Anything that helps spread disease or making the healthy sick is lawfully prohibited for it subjects lives to destruction, which is prohibited by Sharia for Allah says

> *AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION*
>
> *(S2:V195)*

and He, highly glorified, says,

> *AND SLAY NOT YOURSELVES VERILY ALLAH IS UNTO YOU EVERY MERCIFUL*
>
> *(S4:V29)*

and also on the ground of the Hadiths we earlier mentioned.

5. In order to prevent spreading of contagious diseases and limit harmful effects doctors must acquaint patients with the nature of their illnesses - either expressly or allusively, according to what is dictated by the doctor's discretion and knowledge of his patient's psychological, health and social conditions - and they should follow definite instructions and clear methods.

6. They should also inform quarters concerned in the state of contagious diseases, i.e. those which rapidly spread imposing universal danger.

7. With reference to sexually transmitted diseases which have effects, either from the aspect of conjugal relationships or in respect of transmission of disease to wife or foetus, I think the husband must be informed of his case (expressly or allusively as I earlier stated) then the wife is also told (expressly or allusively).

By doing this the doctor will have fulfilled his commitment towards Allah, for besides being entrusted with patients' secrets, he is also entrusted with the health of those whom he knows will be harmed by this disease. The diagnosis of course must be certain.

The objective of the doctor's mission and profession is to restore patient to health and to do the best to ensure that all people are in good health. And for the sake of this objective the doctor firmly blocks the way against any contagious disease in order to prevent it from afflicting other victims, be they man and wife, father and son or a family or families or the whole community.

What supports this in Islamic Jurisprudence is that jurists, just as they have made it necessary for man to defend himself, property and honour,.. and just as they, for that sake made it permissible for him to harm any violator, who unwarrantedly infringes upon any of those, even if it led to killing him if it is feared that what Allah made inviolable is going to be ravished, they have, also, made it necessary for whoever sees any of such dangers to withstand it and prevent it from afflicting other persons' life, honour or property.

Should the doctor stay passive knowing, perhaps exclusively, that an innocent person's health is threatened,.. whereas it is his duty to fence off this evil in order to salvage a person or persons from a contagious disease?.

Lastly if we compare the failure of the doctor to inform the wife or any one concerned in the manner I have indicated - we would find that informing was the right thing to do, lawfully and rationally, and keeping silent about the matter was the wrong thing to do, lawfully and rationally for this would be conducive to destruction of people whereas it is possible to save them from such an evil.

The Juristic rule says 'Following the better of the two good things is required, and avoiding the worse of the two evils is desirable".

And may Allah grant us success and guide us to the straight path.

Annotations

1. On the authority of Aisha, she said:

"Saad Ibn Abi Waqqas and Abd Ibn Zam'a disputed with each other over a young boy. Saad said: Messenger of Allah, he is the son of my brother Utba Ibn Abi Waqqas and he took a promise from me to that effect; look at his resemblance. Abd Ibn Zam'a said: Messenger of Allah, he is my brother as he was born on the bed of my father from his slave-girl".

The Prophet looked at his resemblance and found a clear resemblance with Utba. (But) he said:

"He is yours, O Abd Ibn Zam'a for the child is for the bed, and stoning for fornicator".

Sauda bint Zam'a, so you should observe veil from him. "He said he did not see Sauda at all"

. (Related by all except Al-Termizi).

In the version of Abu-Dawud and Al-Bukhari:

"He is your brother, O Abd".

On the authority of Ibn Omar, Omar said:

"what about those men who sleep with their slave-girls and then they leave them. Never will a slave-girl come to me and her master admits he had coitus with her but I will attribute her child to him. So, from now on either leave them or do not intercourse with them".

(Related by Al-Shafi').

A "boy's mother": is slave-girl when she gives birth to a boy by her master, and he admits attribution.

Yet, in Fath Al-Qadeer, Vol. 3, p. 301, it was shown that Al-Karkhi explained "bed" to mean "contract". Then Ibn Al-Humam said: "This contradicts their previous explanation for it in the chapter on Al-Muharramat "The Impermissibles": That the woman "is" so that her boy's attribution is established when she gives birth to it, since this "is" to be established after the contract unless we claim that cause is bound to effect which is illogical.."

2. "Al-Inaya" Hamesh "Fath Al-Qadeer" Vol. 3, p. 300.
3. "Nail Al-Awttar" Vol. 6, p. 280.
4. "Kashf Al-Qina'" Vol. 3, p. 254.
5. This is what was maintained by the Hanafites: That their meeting is ideational and possible.
6. "Mughni Al-Muhtaj" Vol. 3, pp. 380, 338.
7. Al-Desouqi's "Al-Sharh Al-Kabeer" Vol. 2, p. 409, and "Al-Kharshi" Vol. 3, p. 266.
8. "Al-Mudawana" Vol. 6, pp. 108, 111, 118.
9. "Muntaha Al-Iradat" Vol. 3, p. 317 - states: "Attribution of child to ten-years-old boy, however, does not decide that he is pubescent. For such a decision requires certainty upon which legal consequences, such as obligations and penalties, are based. So, pubescence should not be decided when a doubt exists. Child is attributed to him just for the sake of preserving kinship as a precautionary measure".
10. Husband is entitled to Oath-taking or disavowal of paternity on discovering pregnancy - except if there is a lawful, rational or natural inadmissibility. If he keeps silent during pregnancy, at delivery or when informed - kinship is attributed to him.
11. "Rad Al-Muhtar" Vol. 3, p. 231, "The commentator added in the Chapter of Li'an and Accusation: So beware of slandering a mother of child with an unknown father. It is maintained that such a slanderer is not subject to prescribed punishment - since accusation exists, this limitation must be mentioned here. Yet, I have not known anyone who mentioned.
12. Ibn Abdeen: "For there must be an expressly - made action. Hence the disability of a dumb is a possibility that may prevent application of the prescribed provision.
13. Ibn Abdeen said: "The commentator has followed, in expressing so, the same course adopted by author of Al-Nahr". It is an erroneous opinion adoption of which is attributable to mentioning of the "magboub" since their cases are similar' He stated in "Al-Muhit" "..as opposed to when a castrated or an impotent man is slandered, for it is possible for them to commit adultery due to having 'tool'".

14. Also when he commits adultery or fornication or becomes insane or the like and remains so, slanderer is not subject to prescribed punishment as Al-Hakem states.

15. In addition to: whether the slanderer is someone other than husband or it is the husband when he accuses her of something without taking mutual Oath.

16. "Al-Sharh Al-Kabeer" Vol. 3, p. 371.

17. "Mughni Al-Muhtaj" Vol. 3, p. 371.

18. It is a punishment unspecified by a text assessment of which is left to ruler's or deputy's discretion.

19. Yet she, Malikites maintain, is not subject to prescribed punishment in the following cases:
    A. If she claims to be married and brings forward evidence of that.
    B. If she is a stranger and claims to be married, her statement is accepted even if she does not produce evidence since this may not be possible for her.
    C. If she has sporadic episodes of insanity and claims that she was slept with during one of these for claim is then accepted and she is spared the prescribed punishment. The Prophet says:

    "No deed good or evil is recorded (for the following) and they are not responsible for what they do: An insane person till he becomes sane, and a child till he grows to the age of puberty, and a sleeping person till he awakes".

    D. If she claims that she has been forced to commit fornication and substantiates her claim.
    E. If she claims that coitus was not complete (was between her thighs, with no insertion) and that semen flowed into her vulva, her claim is accepted.

20. Ahmad and also Al-Tabrani (in Al-Kabeer) related on the authority of Abu-Imama Ibn Sahl from his aunt Al-Ajma' said

    "Among the verses of Quran that were sent down was "And the married man and the married woman stone (to death) the one who commits adultery, this shall always be for the pleasure they had".

    Quoted by Ibn Habban in his "Sahih" on the authority of Ubayy Ibn Kaab. His wording was:

"Surat Al-Ahzab had been equal in length to Surat Al-Baqara, and it had contained the verse of stoning "the married man and married woman stone (to death) the one who commits adultery..."

21. "Al-Muwatta", Hamesh "Muntaqa" Vol. 7. p. 140.

22. Related by Al-Baihaqi in his "Al-Sunan Al-Kubra" Vol. 8, p. 236.

23. See verses 2, 78, 79, Surat 'Al-Maida, 41/surat Al-Haj, 114/Al-Nisa.

24. 'Al-Qurtubi' Vol. 4, p. 49.

25. Ahkam Al-Quran, by Al-Jassas Vol. 2, p. 34.

26. Muhammad Ibn Bakr narrated: I was told by Abu Dawud (with chain of transmitters adopted by him) reporting on the authority of Umaiya Al-Shaabani, said:

    "I asked Abu-Tha'laba AlKhashani: 'O Abu-Tha'laba, what do you say about this verse:

    ON YOU RESTETH THE CASE OF YOURSELVES?

    "He said: By Allah! you have asked one who knows the answer; I had asked the Messenger of Allah about it, and he answered: 'you, however, let commanding that which is reputable and prohibiting that which is disreputable prevail among you".

    "Once you see niggardliness reigns, desire succumbed to, worldliness favoured and opinionativeness prevails, then let the case of yourself rest on you and do not concern yourself with the public. There, in wait for you are patience - requiring times wherein being patient is like holding an ember, and wherein the observer of religious duties is recompensed as much as fifty men each of whom is equal to him in terms of pious deeds. 'Abu-Tha'laba said 'He added something more when I inquired 'O Messenger of Allah, do you mean: as much as fifty men of THEM; "As much as fifty men of YOU' He corrected".

27. Advice is sincerity in both word and action: Al-Khattabi said: al-nasiha (i.e. advice) is an all-embracing word that means giving what should duly be given to one who is advised. It is concise word reflecting brevity and economy of language, there is not even in the

language of single word that is really semantically equivalent. This Hadith (of Tamim Al-Dari) was said to be one fourth of the Religion.

. Al-Nawawi said: Nay it alone (i.e. the Hadith) is expressive of the ultimate aim of Religion, as it is restricted to the matters mentioned.

. The Nasiha for Allah is to attribute to Him only His attributes, and to obey him whether in that which is manifest or that which is unmanifest, to desire His love by being obedient to Him, to fear His wrath by never being disobedient and by always striving (i.e. jihad) in bringing the disobedient penitent to Him.

. Al-Thawri related on the authority of Abdulaziz Ibn Rafi' from Abu-Thumama - Ali's companion - he said: The Disciples said to Jesus, peace be upon him, O spirit of Allah, what is the one who gives nasiha for Allah, he said: he is the one who gives priority to the rights of Allah before his own. The nasiha for the Book of Allah is to learn it, teach it, properly articulate letters during recitation, being meticulously accurate when writing them, understanding its meaning and observing its prescribed provisions and acting according to what is therein stated, and furthermore warding off acts of distortions thereof - The nasiha for this Messenger is holding him in reverence and supporting him to victory alive or dead, ever - reviving his Sunna by learning as well as teaching it, and taking him as an example in what he says and what be does, loving him and loving also his followers.

. The nasiha for the Imams of Muslims is helping them in what they are shouldered with, drawing their attention when there is inadvertence, and being loving when there is dissension, unifying the Muslims' word in allegiance, reconciling people's hearts with them, and more important than anything else helping them not to do any act of injustice by good advice and admonition.

. The Imams of ijtihad (independent judgment by qualified Muslims of the highest degree of learning) are also subsumed under Muslims' Imams. The nasiha for them is by disseminating their knowledge, educating people on their virtues and helping them realize the trustworthy status of those Imams.

. The nasiha for the general Muslims is to feel pity for them, to endeavour to bring them every possible benefit, teaching them what is good, sparing them any harm, and to love for them what one loves

for oneself, and hate for them what one hates for oneself.

. The Prophet, may the blessings and peace of Allah be upon him, said (on the authority of Anas):

"None of you will have faith till he wishes for his (Muslim) brother what he likes for himself".

. (Related by Al-Bukhari, Muslim and others).

. It was also narrated by Ibn Habban in his "Sahih", his version is

"A person does not attain the real faith till he loves for the people what he loves for himself".

. He, also said

"The similitude of believers in regard to mutual love, affection, fellow-feeling is that of one body; when any organ of it aches, the whole body aches, because of sleeplessness and fever".

. Related by Muslim on the authority of Al-Nu'man Ibn Bashir the Prophet also said:

"A believer to another believer is like a building whose different parts enforce each other".

. (Related by Muslim on the authority of Abu Musa)

("Al-Mukhtassar" Hadith 1773, and Al-Targheeb & Al-Tarheeb by Al-Mundhri, vol. 2, p. 577).

28. Besides being individual, responsibility for errors in the Sharia is also collective. Do not you see that payment of blood money (approximately four thousand, two hundred and fifty grams of gold) incurred by the perpetrator of manslaughter is borne by blood relatives, who are among a number of people, approximated to one thousand by some Imams, upon whom such payment is possibly incumbent, so that blood relatives alone are not burdened with it. If there are no blood relatives or if they are poor, the next blood relatives are added to them, and so on. If there are none of those, payment of blood money is undertaken by the state.

. Therefore, responsibility in Islam is a collective one. And if it is so, then it is incumbent upon whoever sees something abominable should modify it with the help of this hand, and if he has not strength enough to do it, then he should do it with his tongue, and if he has not strength enough to do it, (even then he should (abhor it) from his

heart, and that is the least of faith.

29. Abdullah Ibn Abbas reported that Omar Ibn Al-Khattab, campaigned for Sham (Mesopotamia) and when he reached "Sargh" (a village near Mesopotamia immediately after Hejaz) the commanders of the Muslim army, Abu-Ubaida Ibn Al-Jarrah and his companions met him and told him that an epidemic had broken out in Sham. Omar said, "call for me the early imigrants". So Omar called them, consulted them and informed them that an epidemic had broken out in Sham. They differed in their opinions. Some of them said, "We have come out for a purpose and we do not think that it is proper to give it up". While others said (to Omar), "You have along with you, other people and the companions of Allah's Messenger, so do not advise that we take them to this epidemic". Omar said to them, "Leave me now". Then he said, "call the Ansar to me". I called them and he consulted them and they followed the way of the imigrants and differed as they did. He then said to them, "leave me now", and added, "call for me the old people of Quraish who emigrated in the year of the conquest of Mecca". I called them and they gave a unanimous opinion saying, "We advise that you return with the people and not take them to that (place) of epidemic." So Omar made an announcement, "I will ride back to Madina in the morning, so you should do the same" Abu-Ubaida Ibn Al-Jarrah said (to Omar), "Are you running away from what Allah had ordained?" Omar said, "would that someone else had said such a thing, O Abu-Ubaida! Yes, we are running away from what Allah ordained to what Allah ordained, Don't you agree that if you had camels that went down a valley having two places, one green and the other dry, you would graze them on the green one only if Allah had ordained that, and you would graze them ont he dry one only if Allah had ordained that?" At that time Abdulrahman Ibn Oaf, who had been absent because of some job, came and said, "I have some knowledge about this. I heard Allah's Messenger, may the blessings and peace of Allah be upon him, saying,

"If you hear about it (an outbreak of a plague) in a land, do not go to it; but if plague breaks out in a country where you are staying, do not go out from it".

. Omar thanked Allah and returned to Medina".

(Related by Muslim).

30. Fath Al-Mubdi', Vol. 3, pp. 289-290.

31. Mokhtassar Sahih Muslim, Hadith, nos. 1487, 1488, 1489.

LEGAL CONSEQUENCE FOR SECRET-DISCLOSURE IN ISLAM

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Keeping of secrets is a natural thing that is cherished by human nature. Every person loves to keep as many secrets as he can be they good as what is traditionally quoted "Ask help in fulfilling your needs by keeping them or bad as in that which is a wrong-doing is what is kept in the bosom and one hates people to know about it".

People have kept, since early times, enumerating many shapes of virtue, some of the most eminent of them: keeping of secrets, promises, and contracts especially if they were entrusted by other people. Doctors, in the past and the present have been among the first of those who are entrusted with people's secrets. Those taking up this profession are committed to keeping secrets throughout time. Doctors of ancient Egypt and Greece had abided by it. An oath to be taken and a pledge to be adhered to by doctors before they practice this profession have been part of this commitment.

With the advent of Islam whose teachings are based on abiding by values and revivication of those which have fallen into oblivion, this commitment has been made a religion, a creed and a way of life.

Muslim doctors have abided by this. Ibn Abi Usaibia lists in his book entitled "Uyoun Al-Anba' Fi Tabaqat Al-Atiba' (Choicest Reports on Doctors Classes)" some of these pledges taken by doctors in his time, among which "..and I shall not disclose things I see or hear whilst treating patients or in any other time, which should not be talked about off limits". Ibn Abi Usaibia also lists some ethics which were taught to doctors and which they were required to adhere to, such as : prefect morality, intelligence, being careful about keeping patient's secrets, chastity,

abstention from undertaking abortion and such other good morals(1).

Medical Secret Between Habit and Creed

Secrets vary in respect of significance from a person to another and from one society to another.

There may be a person with tender feelings who is affected by a thing that does not bring to any one else. Some societies see that sex, in certain cases, does not cause embarrassment, whereas chastity - some societies deem a taboo. Certain things may be regarded as crimes during a specific period of time; then law, for instance, or custom changes and the matter completely changes.

Some laws have set forth definitions for secrets, some of which I ascribe to custom and practice, and some to defamation or detriment to dignity.

All these, undoubtedly, come under the definition of Islam of a secret. Ibn Abi Usaibia had come so near to this definition by his statement 'which should not be talked about off limits'. This is what is required in all customs, times and places. He had derived it from the Islamic tradition "about which one hates people to know". Anything - in the Muslim society - sinful or disreputable, private parts or weaknesses disclosure of which is prohibited by Allah for the good of Muslim society, is added to this.

There is no difference, as far as disclosure of secret is concerned, between the doctor and anyone else. Yet, it is more emphasized and obligatory for the doctor, for he is entrusted with people's honour, private parts, weaknesses and secrets. If he discloses them, he is, besides being sinful, a betrayer of trust and delinquent of duty with which he is entrusted.

Any one who is in a position similar to his is thus judged. There are penalties for this but which are not discussed in the present paper.

Islam has so much endeared consideration of human feelings to people, for this is a means of progression and elevation to the superiority of mankind on this Earth and for which Divine Honouring was bestowed unto Man through investing him with viceroyship, on behalf of Allah, in the earth. That is why Allah has protected man's honour so that no cover of his is ravished, nor a secret is exposed. He has legislated for him things that should be followed; among which is keeping of secrets and preservation of dignity and honour.

Kinds of Such Secrets

Ordinary Secrets:

Secrets are not the same. There are secrets that are deemed ordinary matters disclosure of which does not harm dignity, run an interest or thwart an advantageous plan. Nevertheless, it is better not to be revealed except by permission of the one to whom a secret belongs.

In this connection there is the 'Hadith related on the authority of Abdullah Ibn Omar from Omar, when his daughter Hafsa was widowed,

> *"I went to Othman Ibn Affan and presented Hafsa (for marriage) to him. He said, "I will Think it over". I waited for a few days, then he met me and said, "It seems that it is not possible for me to marry at present." Omar further said, "I met Abu-Bakr As-Siddeeq and said to him, "If you wish I will marry my daughter Hafsa to you". Abu-Bakr kept quiet and did not say anything to me in reply. I became more angry with him than with Othman. I waited for a few days and then Allah's Messenger asked for her hand, and I gave her in marriage to him. Afterwards I met Abu-Bakr who said, "Perhaps you became angry with me when you presented Hafsa to me and I did not give you a reply?" I said, "Yes". Abu-Bakr said, "Nothing stopped me to respond to your offer except that I knew that Allah's Messenger, may the blessings and peace of Allah be upon him, had mentioned her, and never wanted to let out the secret of Allah's Messenger, And if Allah's Messenger, had refused her I would have accepted her."*

(Related by Al-Bukhari).

Anas said to Thabit:

> *"the Prophet came to me as I was playing with playmates. He greeted and sent me on an errand and I made delay in going to my mother. When I came to her she said : what detained you? I said : Allah's Messenger, may the blessings and peace of Allah be upon him, sent me on an errand. She said : what was the purpose? I said : It is something secret. Thereupon she said : Do not then divulge the secret of Allah's Messenger, to anyone. Anas said : By Allah, if I were to*

divulge it to anyone, then O Thabit, I would have divulged it to you."

(Related by Muslim & Al-Bukhari).

Ibn Hajar said : Some scholars suggested : it appeared as though that secret belonged to the Prophet's women. Otherwise if it was a sort of knowledge, no one would be entitled to conceal it. Ibn Battal said : the opinion held by the learned people is that a secret is not revealable if that will hurt the one entrusting it. The majority of them maintain that what is required to be kept of it while he is alive is no longer so when he dies unless there is something objectionable to it for him. I say : This, it seems, is divided, after death, into three categories : secrets permissible to be revealed, or perhaps recommended, even if the one entrusting would object, as it is the case when there is something in them that ennobles him, such as a miraculous deed or an outstanding virtue and the like. Secrets, disclosure of which is reprehensible in general, or perhaps prohibited, are the ones referred to by Ibn Battal. Secrets necessary to be revealed, are those that must be disclosed such as a right due to him which he has so far been not claimed it, but after he dies, should be told to its legitimate claimer (2).

It appears to me that the secret with which Anas was entrusted was an ordinary one, for a major secret that is definitely desired to be kept is not entrusted to a young child playing with mates.

Yet Anas, however, did not want to disclose the secret of the Messenger of Allah, Likewise the secret of the Prophet known by Abu-Bakr, namely the one concerning his "mentioning" Hafsa, was also an ordinary secret. If Abu-Bakr had revealed it, Omar would have been pleased with it; but he wanted to keep the secret, though it was of no major significance, until the Messenger of Allah, revealed it himself.

Non-ordinary Secrets :

There is controversy about certain things concerned with disclosure of Muslim's secret and unveiling of cover. Among these are : pursuing a Muslim's weaknesses, spying on him, defamation, backbiting, communication of evil gossip, exposing of what disgraces him and subjects him to distress and humiliation.

With respect to not exposing the Muslim and keeping his secret in what disgraces, distresses or humiliates him, whether a person knows this

secret from his brother in a certain way or from the party concerned, there are traditions that necessitate, keeping such secrets, among which:

The Messenger says:

"He who relieved a Muslim from hardship Allah would relieve him from the hardships to which he would be put on the Day of Resurrection, and he who did not expose (follies of a Muslim) Allah would conceal his follies on the Day of Resurrection."

This was also relayed as:

"and he who does not expose a Muslim Allah will not expose him in this world or in the Hereafter"

(Related by Muslim.)

And the Prophet also says:

"The servant (who conceals) the faults of others in this world, Allah would conceal his faults on the Day of Resurrection."

(Related by Muslim.)

Another Hadith of the Prophet is:

"He who sees a "private part" and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life."

(Related by Abu-Dawud & Al-Nisa'i.)

Muslim scholars have talked about "not to expose" and the relationship binding the "one who does not expose" with the "one who is not exposed, insofar as commanding what is reputable and prohibiting what is disreputable are concerned - they said : "Not exposing" neither negates commanding that which is reputable nor prohibiting what is disreputable and giving advice. Moreover, the "on who does not expose" must advise the "one who is not exposed and show him his fault and ask him to desist from disreputable things if there was any.

Conditions Concerning One Who Is Not Exposed:

Imam Al-Nawawi stipulated that one who is not to be exposed must be a person who is not known for harmfulness and corruption. But if he is

corrupt it is advisable that such a person is to be exposed, for not exposing him will encourage him to do more harm, corruption and violation of what is inviolable as well as embolden others to follow suit. Rather, he must be reported to authorities if an evil that is entailed by such reporting is not feared.

Conditions Concerning That Which Is Not To Be Exposed:

All this so far concerns not exposing a sin that has been done. But as to a sin that is being committed and the culprit is seen in the act, it must be immediately denounced and the perpetrator must be prevented from it as far as it is feasible, delaying of that is impermissible. But if it is not possible to stop him, the matter should be reported to those responsible if such reporting will not bring about an evil. This is deemed an act of due advice and not a calumny.

Secondly : When sin is done openly. Al-Kamal Ibn Al-Humam states in "Fath Al-Qadeer" : 'This is about one who does not habitually commit sin and show it off. But if the matter reaches the point of announcing and showing it off and bragging about it as some do, testifying to it should be better than keeping silent about it, because the intention of Sharia is to clear the land from sins and vile deeds by restraints and obligations. And this is realized by turning penitent on the part of wrong - doers and by reprehending them. If voracity, say, for committing fornication and drinking in an indifferent and flagrant way becomes common and obvious, clearing the land of such evils by means of penitence is a propability that is countered by failure to turn penitent on the part of the evil-doers. Therefore, the other measure for realizing this objective must be taken; namely application of prescribed provisions. But, as to he who commits fornication once, or several times, covertly, timidly and repents then it is better not expose him" (4).

The Law-maker calls For "Not Exposing" and Emphasizes It.

The Legislator emphatically asks the Muslim not to expose his brother Muslim who does not do evil openly. Some scholars even made lying permissible in order not to expose the Muslim : Al-Ghazali, said 'the Prophet, may the blessings and peace of Allah be upon him, said:

> *"A liar is not one who tries to bring reconciliation amongst people and speaks good in order to avert dispute".*

This indicates the necessity of reconciling between people. Absti-

nence from lying is necessary. And anything necessary does not become unnecessary except by something that is more imperative, such as when man has to resort to lying in a state of war and in not exposing the weaknesses of all the muslim army.

This is what Ibn Hajar meant when he said: 'Lying may be permissible and may be necessary. "The determinant in A-Ghazzali's opinion is: "The ill effect of lying should be compared with that resulting from telling the truth. If the latter is graver, lying then, is permissible. And if the reverse is true or its superiority in graveness is doubtful, lying, therefore, is prohibited. If the end is commendable and cannot be attained except through lying, as when one whose blood is forbidden to be shed goes into hiding when an oppressor wants to kill him, lying here is necessary. If such an oppressor inquires about a trust to seize it, lying, or denial, is necessary. If a person is asked by the ruler about sin he has covertly committed, he may lie. A person, in such a case, may deny his brother's secret.

The Prophet, may the blessings and peace of Allah be upon him, said:

> *"He who does not expose a Muslim, Allah will not expose him in this world or in the Hereafter".*

and said,

> *"The person (who conceals) the faults of others in this world, Allah would conceal his faults on the Day of Resurrection".*

Abu Said Al-Khudri, said 'The Prophet, said:

> *"Never will a Muslim see a "private part" of his brother and does not expose it, but Allah will let him enter His Gardens for this".*

and the Prophet said to Hazzal who brought in Maaiz to confess to committing adultery,

> *"O Hazzal, had you covered (not exposed) him with your garment, it would have been better for you".*

Then he went on saying: 'This is one of the most significant proofs of the Legislator's desire for not exposing sins, since adultery is the gravest of them : Four competent witnesses are required by the Legislator to testify to seeing the adulterer actually committing the act of adultery.. with penis like "the little stick when fully inserted in a Kohl bottle, and this is

quite impropable. Even if Judge himself knew it for sure, he would not be in a position to reveal it.. look how Allah does not expose sinners in His creation by restricting the means of exposing them! (5).

Not To Detect A Muslim's "Private Part"

'Aura is anything that is not desired to be exposed to people whether physical, as strict pudenda or deformities, or moral, as ill doings and utterings.

Not to detect it, means refraining from spying on, looking for or being inquisitive about it. It also means abstension from unveiling its cover either by looking, listening, or by other means. For it has been covered by Allah.

The Messenger of Allah, says:

> *"If Allah does not expose a subject's fault in this world, He would not expose it in the Hereafter, and if He exposes it in this world, He would not expose it in the hereafter".*

(Related by Al-Termizi, Ibn Maja and Al-Hakem: A "sound" Hadith.)

In Muslim's version,

> *"The servant (whose fault) Allah conceals in this world, Allah would conceal on the Day of Resurrection"*

The Messenger, may the blessings and peace of Allah be upon him, prohibited tracing Muslims' faults. He said:

> *"Oh, you who have believed by their words and in whose hearts faith has never entered, never backbite Muslims, nor trace their weaknesses, for he who traces his brother's weakness, Allah will trace his, and he whose weaknesses are traced by Allah, shall be exposed by Him even if inside his own house".*

The Prophet said to Mu'awiya:

> *"If you trace the weaknesses of people you vitiate them or almost cause them to"*

(Related by Abu-Dawud with "sound" ascription).

This indicates that keenness on questing for faultiness and secrets is one of the sins that wipe out faith from hearts and wreaks wrath of Allah on the perpetrator of this crime who is threatened to be exposed by Him. It is

also conducive to spreading of corruption, panic and apprehension among Muslims, as well as causing them to get busy with personal or other people's affairs that are harmful and disadvantageous, and, at the same time, abandoning important matters, and neglecting great aspirations and ends.

Hence, Allah warned us against that and threatened those who do not obey Him. He, highly exalted, says:

> *VERILY THOSE WHO LOVE THAT INDECENCY SHOULD BE PROPAGATED AMONG THOSE WHO BELIEVE, FOR THEM SHALL BE A TORMENT AFFLICTIVE IN THIS WORLD AND THE HEREAFTER.*
>
> *(S24:V19)*

**Prohibition of Spying on Muslims:
Or Suspecting Them.**

Allah, has also prohibited spying on Muslims or suspecting them. He, highly exalted, says:

> *O YE WHO BELIEVE! AVOID MUCH SUSPICION, VERILY SOME SUSPICION IS A SIN. AND ESPY NOT, NOR BACKBITE ONE ANOTHER : WOULD ANY OF YOU LOVE TO EAT THE FLESH OF HIS DEAD BROTHER. YOU DETEST THAT.*
>
> *(S49:V12)*

The Prophet, may the blessings and peace of Allah be upon him, says:

> *"Do not spy upon each other, and do not listen to the evil talk of the people about other people's affairs, and do not have enmity with one another or be opposed to one another and be brother bondmen of Allah".*

Al-Awza'i said to "spy" is to search for something, and to "spy" is to listen to what the people say while they hate you to do, or to eavesdrop, and in the Hadith,

> *"if somebody listens to the talk of some people who do not like him (to listen), then molten lead will be poured into his ears on the Day of Resurrecion".*

(Related by Al-Bukhari).

These are the ethics of Islam and of its society. They command Muslims to advise and not expose when they see something wrong. They

also order not to spy, suspect or eavesdrop in order to unveil secrets covered by Allah.

> *"Beware of suspicion (about others), as suspicion is the falsest talk, and do not spy upon each other, and do not listen to the evil talk of the people about other people's affairs".*
>
> (Riyad Al-Saleheen 602).

Abu-Dawud and some other narrators quoting Zaid Ibn Wahb:

> *"We said to Ibn Mas'oud : Do you want to see Al-Waleed Ibn Oqba Ibn Abi Ma'it while drops of wine are on his beard? Ibn Mas'oud said we were forbidden to spy, so if something is apparent before our eyes, then it is evidence".*

Keenness on prohibiting what is disreputable may instigate one to spy and forget these strict instructions that forbid spying. This is what happened to Omar Ibn Al-Khattab, may Allah be pleased with him.

Al-Khara'iti quoted in "Makarim Al-Akhlaq" on the authority of Thawr Al-Kendi that Omar Ibn Al-Khattab, was making nightly rounds in Al-Madina when he heard a man singing in a house. He entered by scaling a wall and found a woman with him and wine. Omar said "you! enemy of Allah. Do you think that Allah, glorified be he, would not expose you whilst you commit a sin? The man said : "And you O commander of the Faithful! don't be so harsh on me. I disobeyed Allah in one thing, while you disobeyed Him in three: He, highly exalted be He, says:

> *AND ESPY NOT*

and you spied. He, glorified be He, says:

> *SO ENTER THE HOUSES BY THE DOORS THEREOF*

and you have scaled a wall. He, highly glorified be He, says:

> *ENTER NOT HOUSES OTHER THAN YOURS UNTIL YE HAVE ASKED LEAVE AND INVOKED PEACE ON THE INMATES THEREOF*
>
> *(S24:V27)*

and you have entered without permission".

Omar, may Allah be pleased with him, said 'would you be a better one if I pardon you?'. He answered 'Yes' Omar pardoned him and went out (6).

Backbiting or Defaming a Muslim:

Allah, highly exalted and glorified be He, prohibited backbiting Muslims. He says:

> *DO NOT BACKBITE ONE ANOTHER : WOULD ANY OF YOU LOVE TO EAT THE FLESH OF HIS DEAD BROTHER. YE DETEST THAT*
> *(S49:V12)*

The Prophet, said:

> *"All affairs of a Muslim are inviolable for his brother in faith; his blood, his wealth and his honour".*

(Related by Muslim and Al-Termizi).

And He also said:

> *"Do you know what is backbiting? They (the companions) said: Allah and His Messenger know best. Thereupon he said: Backbiting implies your talking about your brother in a manner which he does not like. It was said to him: what is your opinion about this that if I actually find (that failing in my brother which I made a mention of? He said: if (the failing is actually found (in him) what you assert, you in fact backbited him, and if that is not in him it is also a slander".*

(Related by Muslim and Abu-Dawud).

Islam also forbids calumny. Hudhaifa narrated that the Messenger of Allah may the blessings & peace of Allah be upon him, said:

> *"A tale-bearer shall not enter the Gardens"*

and in another version

> *"A bearer of false tales".*

(Related by Al-Bukhari and Muslim).

Calumny as a word is the fact of disclosing what is hated to be disclosed, whether the "hater" is one who is reported about or one who is reported to or a third party, and whether act of disclosure is conducted by speaking, writing, hinting or gesturing; and whether the reported thing is an act or an utterance, be it about a demerit or a defect in one who is reported about or not. Calumny is, in fact, divulgence of secret and unveiling the cover of what is hated to be uncovered. If seen by a person, they should not be

disclosed, except for those things which, if told, will advantage a Muslim or prevent a graver sin., as when someone is seen taking a property of another, he should be testified against, in order to preserve the right of the one who is testified for. If what is calumniated about pertains to an existing shortcoming or defect in one who is calumniated, the debaser will, thus, join calumny and backbiting. The desire of defaming one who is reported about, demonstrating affection toward one who is reported to or seeking fun in conversation, indulging in telltale talk and falsehood and driving a wedge between Muslims whereas Allah and His Messenger have commanded reconciliation between them as Allah, says:

> *AND RECONCILIATION IS BETTER*

and

> *WHEREFORE MAKE RECONCILIATION BETWEEN YOUR BRETHREN*
>
> *(S49:V10)*

and the Prophet, says:

> *"shall I tell you of a devotional act better than fasting, giving charity and prayers" He said: we said "Yes. He said: Bringing peace between people, since lack of conciliation is destructive rupture of relations".*

If that is so, it is then the very thing that is prohibited and it is surely destructive as the munificient Hadith states.

What the Ulama say to whom Calumny is Told:

Any one who is told a calumny should do six things:

First

He is not to believe calumniator for he is a transgressor and; accordingly, ineligible as a witness. Allah says:

> *IF AN EVIL-DOER COME UNTO YOU WITH A REPORT, THEN INQUIRE STRICTLY*
>
> *(S49:V6)*

Second

He is to forbid him from doing that, advise him and denounce his action, Allah, glorified be He, says:

AND COMMAND THAT WHICH IS REPUTABLE AND PROHIBIT THAT WHICH IS DISREPUTABLE

(S31:V17)

Third

To hate his deed for the sake of Allah.

Fourth

Not to bear ill thoughts about his absent brother, for Allah says:

AVOID MUCH SUSPICION, VERILY SOME SUSPICION IS A SIN.

Fifth

What he is told must not make him inquire and investigate. (And espy not).

Sixth

He is not to allow himself to do what he had forbidden the calumniator from, and not to tell the calumny to anyone. Omar Ibn Abdulaziz, may Allah be pleased with him, was reportedly visited by a man who told him something about another man. Omar said: If you want we will consider your case. If we found you a liar, then you would be one of those meant by the verse

IF AN EVIL-DOER CAME UNTO YOU WITH A REPORT, THEN INQUIRE STRICTLY

(S49:V6)

And if you were truthful, you would be one of those meant by the verse (A defamer, spreader abroad of slander), and if you want we will pardon you. The man said "Pardon me, O commander of the Faithful. I will never do such a thing again".

Islam prescribed effective penalties for calumniators. Allah, glorified be He, says:

AND THOSE WHO ACCUSE CLEAN WOMEN AND THEN BRING NOT FOUR EYE-WITNESSES, SCOURGE THEM WITH EIGHTY STRIPES AND ACCEPT NOT THEIR TESTIMONY FOR EVER. AND THOSE! THEY ARE THE TRANSGRESSORS

(S24:V4)

This is for the sake of preserving people's honour from any attack and for

safeguarding them. The Qur'an has made this penalty nearly equal to the penalty for fornication; i.e. eighty stripes along with ineligibility as witnesses and being stigmatized as transgressor. The first penalty is corporeal and the second is moral and public. It is enough that the slanderer's testimony is not accepted and that he drops in other people's estimation and lives among them untrusted in whatever he may say.

The third penalty is related to religion: He is a deviator from faith and a deserter of the straight path, unless he brings forward four eye-witnesses, or three if he himself has seen the act of intercourse, to testify to seeing fornication being committed - thus his accusation will be genuine - But this is not possible for an informer to do (7).

A believing community does not lose anything by not accusing people as it loses by prevalence of accusation, permitting it, not minding announcement, instigating many of those who would not commit the act which they used to deem detestable and forbidden by the community or at least rarely committed. This is besides the agonies that afflict honourable women and men, and the effects of such practices on people's lives and the peace of secure families.

Al-Hulaimi said "the impact of sins on the hearts of those among whom they prevail is mitigated, and the perpetrator is not encouraged to repent, if they are exposed. 'Then he added: do no ally with Satan against your brother'.

Omar was reportedly making nightly rounds of Al-Madina when he saw a man and a woman committing sin. When morning came he said addressing people 'what would you do if a ruler saw a man and a woman committing sin, and he applied the prescribed provision to them?

They said "You are the ruler and you should punish them". Ali, may Allah be pleased with him put in "you cannot do that. If you did you would be subject to the prescribed provision of slander. Allah has not made it safe that less than four should testify to this". Omar left the matter for some time. Then he asked them the same question again. The people's answer was the same so was Ali's. This indicates that Omar was hesitant as whether a ruler is entitled to judge a case that entails application of Allah's prescribed provisions on the basis of what he personally knows about it. That is why he consulted them for the sake of assessment and not just to inform, fearing that it might not be his right to do so, or else he would be a slanderer. This is one of the best proofs for the emphasis of Sharia on not exposing sins. For though fornication is the gravest sin, even a ruler is

not permitted to reveal it unless the criterion of four witnesses pertains.

Disclosure of mutual secret by either or both spouses is prohibited. The Prophet says:

> *"The most wicked among the people in the eye of Allah on the Day of Judgement is the man who goes to his wife and she comes to him, and then be divulges her secret".*

Some Cases of Secrets and Legal Consequences Thereon

After this review, I have to present cases of certain secrets, then show their legal consequences in the light of Islamic prescribed texts:

Case One: Disclosure of Secret Upon Patient's Request.

The patient may ask the doctor to tell him the kind of illness, result of examination or X-ray or of the prospect of his state of health.

In this case the doctor should answer the patient's request so long as the latter knows where his interest is and is sane and is not legally incapable. He is entitled to this and it will not be a kind of disclosure if he is told. But what if revealing the secret to him will bring in more pain, be fatal to him, or result in certain disaster or delay cure?.

In this case the doctor should withhold and inform a relative instead and advise him not to tell the patient or reveal the secret except when necessity dictates. The onus of keeping the secret will lie with this relative instead of doctor.

Case Two: Disclosure of Secret of Patient Legal Administrator Or Marriage Partner.

There is no objection to revealing secret to the patient's legal guardian for he is the one who looks after him. It is also permissible to inform the spouse if it is about matters of mutual concern such as sterility or impotence. The doctor is not permitted to disclose patients' personal matters except with his permission, such as venereal diseases or pregnancy in case of husband's inability to fertilise.

Case Three: Disclosure For Prevention of Crime.

Jurists made it necessary to disclose a secret in order to thwart a crime imminent, as when a man comes and asks the doctor to abort a

pregnancy, kill a patient during surgical operation or inquires about what kind of drugs is used to kill a person he wants to get rid of, ... etc.

In this case the secret must be revealed to relevant authorities after exhausting the method of advising and admonishing.

The Prophet, may the blessings and peace of Allah be upon him, said:

> *"He who amongst you sees something abominable should change it..."*
>
> (The Hadith).

Case Four: Cases in Which Doctor is Arbiter.

An example of these cases is when a governmental department or a company asks the doctor to examine candidates to be employed and state their illnesses that would interfere with performing their prospective work. In this case the doctor is trusted, therefore he must state the truth and he is not deemed sinful. One who goes to the doctor to be examined, in such a case, is fully aware of the fact that his secret will be revealed and he does not mind that. And even if he minds, the doctor is obliged to disclose the truth even against the patient's wish.

Al-Qurtubi said: Backbiting is permissible in testifying or for preventing a harm, as when the Prophet said to Fatma Bint Qais when she sought his counsel about Mu'awiya and Abu-Jahm Ibn Hudhaifa:

> *"As for Abu-Jahm, he does not put his staff from his shoulder, and as for Mu'awiya he is a poor man, having no property"*
>
> (16/34.)

Case Five: Disclosure For Preserving and Safeguarding the Nation.

Certain cases are considered dangerous for the nation, such as contagious diseases.

The doctor must report these cases for safeguarding the nation and meanwhile preserving the patient's health as far as possible.

Many a prophetic tradition refer to this, such as:

> *"Run away from the leper as one runs away from a lion" and, "If you are in a land where plague has broken out, don't get out of it, and if you were to know that it had broken in a land*

then don't enter it."

Case Six: Revealing A Crime Committed.

This case requires some elaboration. The doctor is either an arbiter, as when he is asked by the state to help uncover a murder crime or to determine the cause of death of a person to know whether there is a criminal act behind it - and here the legal consequence is similar to that of case Four. But if he is asked by the family of a murdered person and finds out that there is a crime; should he report the matter to the authorities or keep silent and conceal the secret?.

In this case the doctor is not obliged to inform the authorities about this crime which has already taken place. Rather, he is asked not to expose the secret. The Prophet asked Hazzal who brought in Ma'iz when he committed adultery, which is a crime punishable by stoning to death,

"Had you covered (not exposed) him with your garment".

Some jurists concur with this opinion.

Ra'ouf Ibeid says: 'the general rule requires giving precedence to the special text as it is an exception from the general text. Consequently, the obligation of keeping the secret is given priority to the obligation of reporting an existing crime. The former is based on two reasons: the first is that the doctor, when asked to treat a patient, has no duty other than doing his best to cure him. The other reason is that commitment to keep secret is absolute and general and the doctor is not freed from it or forced to reveal the secret except by means of a special legal text. Law has excluded, from the commitment of keeping the secret, revealing information if it indicates a felony or misdemeanour that has yet to take place - yet it is optional - in order that the disclosure of secret is left to the discretion of the doctor with whom it is entrusted. But since exceptions made by law may not be excessively used, the doctor who knows about a crime already committed, or witnesses it on his patient, should not report or testify to it as long as there is no legal text that allows or forces him to do so (8).

It is worth-mentioning in this connection to recall that the German occupation authorities issued orders to French doctors to report about wounded resistances members treated by them. They refused and adhered to professional secrecy claiming that orders issued by occupation authorities would not make them abandon keeping a secret, which was imposed by law. Patriotism made them adhere more to it. The result was

that many of them lost their lives for that cause.

Disclosure of Patient's Secret:

Therefore disclosure of patient's secret is not permitted if he does not permit it. Disclosure of secret in this case is categorized as calumny or backbiting. This pertains if secret is not related to an act of fornication. But if it is so, it must not be revealed except after bringing forward four witnesses provided that they are all competent, freeborn and Muslim, they should distinctly describe the act of fornication or adultery, name both adulterer and adulteress and the place where the act had been committed, and on condition that all witnesses be present at one place for testimony, or else they are subject to the prescribed provision for slander if they are only three or if any of the conditions is not fulfilled.

As to the question submitted before us; namely: If the husband's incurable sterility is confirmed and the wife somehow gets pregnant, the doctor should not reveal wife's secret nor inform the husband or the authorities for she is married and there, perhaps, is something that, though known to Allah medicine has not discovered yet. And we are forbidden from suspecting

> *"Beware of suspicion (about others), as suspicion is the falsest talk"*

(Agreed upon).

Furthermore, he is obligated not to expose her in something that has already taken place as scholars indicated, especially that it is a matter not void of doubt and there is no proof to substantiate it as I have previously shown when discussing adultery. It is of interest to note that pregnancy of an unmarried woman is not a valid proof for application of prescribed punishment if pregnancy was reported.

Ibn Qudama stated in "Al-Mughni": 'If a woman who has no husband or master gets pregnant, prescribed provision is not applicable to her. She is to be questioned; if she claimed that she was forced to it or there was a suspicion as to the actual act of copulation or she does not confess, she is not to be subject to prescribed punishment. This is the opinion maintained by Abu-Hanifa and Al-Shafa'i. 'Women may get pregnant without copulation by means of letting semen enter into her, either by herself or by someone else. This is why pregnancy of woman who is maiden is possible and such a phenomenon happened before. Ali and Ibn Abbas reportedly

said: "If there is a "maybe" in connection with application of prescribed provisions, it is, then, inapplicable. The Prophet, may the blessings and peace of Allah be upon him, says:

"No penalty on suspicion" (9).

The doctor is concerned with treatment of the sick, not exposing secrets and not judging, investigating or assuming authority. The Prophet prohibited slandering one's lineage which are lawfully established. He also said:

"Two (things) are found among men which are tantamount to unbelief : slandering one's lineage and lamentation on the dead".

(Muslim 550).

2 - The second question: If a doctor does an act that is in contravention of the rules of the profession, and this act is discovered by a colleague; should the latter report the matter and disclose the secret?.

Yes, his colleague should report to the concerned authorities for if he does not do so, he will be deemed a betrayer of trust. This is an act of obligatory advising and not prohibited backbiting.

Referring to not exposing Muslims, Imam Al-Nawawi, said: "And as to raising doubts about narrators, witnesses, trustees on charity or inalienable estates or orphans and the like, they are to be subject to that when necessity arises. Not exposing them is not permissible if something that blemishes them is observed.

This is not an act of prohibited backbiting. Rather, it is obligatory advising and an opinion held(10) by consensus.

To the doctor, being entrusted with things graver than property and more corruption-enticing i.e. inviolable things and people's honour; the legal implications should even be more rigorous.

Moreover, delinquency on the part of trustees of inalienable estates, orphans and the like can be rectified, but transgression of trustees of people's honour and inviolable affairs which Allah emphasized to preserve and not expose, can not be redressed.

Question 3 - If the doctor finds that the father of the family has a venereal disease, what should his attitude be? should he inform family or not?

I say: No, he is not obliged to inform the family or other authorities. The disease might have been transmitted to him by means other than adultery. Even if the doctor knows that it was through adultery, he should do nothing except advising him, or else if he discloses the secret he will be a backbiter and calumniator and this is prohibited. The Prophet said:

> *"If what you claim is actually found (in him) you in fact backbited him, and if that is not in him it is a slander".*

Moreover, such is not a thing that necessitates prescribed punishment as we earlier indicated. If the doctor accuses the patient of Adultery the doctor himself may be subject to punishment since he does not have the prescribed evidence for adultery; i.e. the four eye-witnesses.

Mending Hymen Hymenorrhaphy

Hymenal tears are either due to something congenital, an accident or sexual intercourse.

If the tear is congenital in the young girl, then there is nothing wrong in repairing it.

This is conducive to purity and chastity, and it helps rid the little girl of complexes and fear of being victim of misgivings in the present and in the future. Moreover, it may relieve relatives and Muslims of agony. There is also no objection to repairing the hymen of a grown up female if rupture is due to something congenital so that she is not liable to misgiving by the ignorant. If rupture is due to an undisgraceful cause such as, hemorrhage, surgical removal of ulcers or anything that leads to rupture of hymen such as a leap, entering of a wooden sliver or as a result of torture or anything like that, there is, then, no objection to repair.

Sin-related Rupture:

Yet, if rupture is due to sins or to something disgraceful, it is, then, necessary to consider the matter carefully!.

If the injury was inflicted forcibly, then the opinion will be the same as stated above.

But if the disreputable act is not committed forcibly, the following question is raised:

Is the repair operation to be considered assistance to committing disreputable acts, propagating indecency and cheating prospective

husbands? Traditions have forbidden that: Muslim quoted Abu-Huraira, after the Prophet,

> *"He who took up arms against us is not of us and he who acted dishonestly towards us is not of us".*

The Prophet also said:

> *"and do not offer a high price for something in order to cheat another"*

(Agreed upon).

And in another account:

The Prophet happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of that heap of eatables (corn): what is this? He replied: Messenger of Allah, these have been drenched by rainfall. He (the Prophet) remarked:

> *"why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower)".*

(Related by Muslim).

He, may the blessings and peace of Allah be upon him, said:

> *"He who depraves someone's wife or his slave is not of me (not my follower)"*

(Related by Abu-Dawud with "sound" ascription).

Therefore, is cheating in honour, pretending chastity and assisting in such cheating not forbidden?

The Prophet, may the blessings and peace of Allah be upon him, has forbidden fraud and cheating in food, prices as well as other kinds of deception and falsification. Is it not an act of fraudulence, that a Muslim is prohibited to participate or assist in, to change a deflowered female into a virgin and a besmeared woman into a chaste one? Or is this deception done in order not to blemish Muslims' honour, and this falsification becomes harmless as far as it will repair a damage, and help not to expose a repentant female whom Allah will redeem her esteem?

Traditions Favour Not to Expose

Hannad and Al-Harith quoted on the authority of Al-Shabi that a man came to Omar Ibn Al-Khattab and said "I have a girl whom I had before Islam buried alive then took her back before dying. She lived with us till Islam came and became a Muslim. Thereafter she was punished according to a prescribed provision by Allah, glorified be He, she took a blade to slay herself but we could save her after she had cut some veins. We treated her till she was cured, and she became a good penitent Muslim. Someone came proposing to her, and I told him about what was of her. Omar said: Do you come to that which Allah did not expose and you reveal? By Allah, if you tell anybody about her story I'll punish you to be an example for the people. Let her marry as a chaste Muslim. (11)

On the authority of said Ibn Mansour and Al-Baihaqi, from Al-Shabi, that a slave girl committed a sinful act and the prescribed punishment was applied to her, then they came as emigrants, she repented and became penitent. Suitors used to come to her uncle but he hated to marry her without telling what happened of her. He remained reluctant to reveal her secret till he mentioned her before Omar Ibn Al-Khattab, who said: Marry her as you marry your righteous girls.

Al-Baihaqi and Al-Shabi quoted: A woman came to Omar, and said: O Commander of The Faithful, I found a boy and found a knitpurse in which there was a hundred dinars. I took the boy and hired a wet-nurse for him. Four women used to come to him and kiss him, and I know not who his mother is? He said to her: if they come to you, inform me. So she did. He said to one of them: Which of you is this boy's mother? She said: By Allah, not well-said nor well-done O Omar! Do you come to a woman whom Allah did not expose and you want to unveil her secret. He said: You tell the truth. Then he turned to the woman who came to him and told her: If they come to you do not ask them about anything, and treat their boy well. Then he left.(12)

Abu-Dawud and Al-Nesa'i quoted Dakheer Abi Al-Haitham scribe of Oqba Ibn Amr, said: I said to Oqba Ibn Amar we have neighbours who drink(wine) and I will call the police to take them. He said: No do not do that. Advise them and threaten them. He said: I tried to make them quit(drinking) but they did not, and I will call the police to take them. Oqba said: What is the matter with you. Don't do: I heard the Messenger of Allah, may the blessings & peace of Allah be upon him, saying:

"He who sees a "private part" and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life".

(Related by Abu-Dawud, Al-Nesa'i and Ibn Habban in his "Sahih": the wording is his. It is also related by Al-Hakem who said: "sound" ascription).

I think covering is acceptable and refraining from repairing the hymen is better if rupture is caused through fornication. The above traditions only advocate not to expose and do not endorse interference neither by means of action or by help, and Allah knows best.

Annotations

1. “Uyoun Al-Anba Fi Tabaqat Al-Atibba” 1 & 35.
2. “Fath Al-Bari” 11/82 Dar Al-Ma’rif.
3. Sharh “Sahih Muslim” Imam Al-Nawawi 16/135, “Fath Al-Bari” By Ibn Hajar 5/97.
4. “Fath Al-Qadir” 4/114 & 119.
5. “Ihya Ulum Al-Deen” 2/199, 200 Al-Ma’rifa Edition.
6. See “Rouh Al-Ma’ani” 9/157 Dar Al-Fikr Ed. and “Tafseer Ibn Katheer” 4/213 Dar Al-Ma’rifa Ed. “Ihya Ulum - Al-Deen” 2/200.
7. See “Al-Targheeb Wa Al-Tarheeb” 4/280.
8. Ra’ouf Ibeid “Crimes on person & Property” (1974 Ed.) p. 291. See, also “Medical Secret” Research by Dr. Abdulsalam Al-Tarmanini.
9. “Al-Mughni” - Ibn Qudama 8/210.
10. “Sharh Al-Nawawi Ala Muslim” 16/135.
11. Hayat Al-Sahaba, Part Two p. 730 from Kanz Al-ummal (2:150).
12. Ibid 2/730.

DISCUSSION

Chairman, Sheikh Ezzuddeen Al-Khateeb

Praise be to Allah, and peace be upon His Messenger.

To begin:

Brothers, I extend my deepest thanks and gratitude to His Excellency the Minister of Health Dr. Abdulrahman Abdullah Al-Awadi who made this meeting possible, and to those shouldering the responsibility of this blessed symposium. We now begin this session by giving the floor to Dr. Muhammad Sulaiman Al Ashqar who will speak on Secret-Disclosure in Islamic Law.

Dr. Muhammad Suliman Al-Ashqar's Paper (Research Section P. No 82).

Chairman, Sheikh Ezzuddeen Al-Khateeb

The floor is now given to His Eminence Sheikh Muhammad Al-Mokhtar Al-Salami to deliver his speech on "The Doctor Between Disclosure and Withholding".

Sheikh Muhammad Al-Mokhtar's paper (Research Section P. No 71)

Chairman, Sheikh Ezzuddeen Al-Khateeb

And now the floor is given to His Eminence Dr. Hassan Al-Shazli Legal consequence for A Doctor Disclosing Some Confidences.

Dr. Hassan Al-Shazli's paper (Research Section P. No. 103)

Chairman, Sheikh Ezzuddeen Al-Khateeb

I beg to name the following members who will constitute the recommendations committee to meet after the presentation of Sheikh Muhammad Al-Ghazali and agree on their mode of action: Dr. Hussain Al Jazaery Chairman, Dr. Hassan Hathout Rapporteur, Dr. Muhammad Naeem Yaseen, Dr. Abdulsattar Abu Ghudda, Dr. Mansour Al Mansour, Dr. Muhammad Al-Ashqar, Dr. Salah Al Ateeqi, Dr. Hassan Al-Shazli, Dr.

Ojail Al-Nashmi, Dr. Abdullah Basalamah, Dr. Tawfic Al-Tamimi, Dr. Mokhtar Al-Mahdi, Dr. Muhammad Haitham Al-Khayyat, Dr. Ali Abdulfat-tah, Dr. Ali Al-Saif, Dr. Ahmad Rajaii Al-Gindi.

The Research of Dr. Tawfiq Al-Wa'i: Disclosure of Secret, will he kindly come up. (Research Section P. No. 154).

Chairman, Sheikh Ezzuddeen Al-Khateeb

The discussion will follow Sunset Prayer; and those who wish to participate are kindly request to register their name so that the session may be well organised.

Dr. Hassan Hathout

I thought that the presentation of His Eminence Sheikh Ghazali will be after the Sunset Prayer, so I believe there is no way but to postpone the discussion till tomorrow.

Chairman, Sheikh Ezzuddeen Al-Khateeb

Debate is postponed till tomorrow, however this does not mean that those wishing to participate do not register their names. Meeting is adjourned for Sunset Prayer.

First Session

The first item in this session is discussing the topics of the first day.

Chairman, Dr. Hussain Al-Jazaeri

In the Name of Allah, the Rahman, the Merciful.

Yesterday we were pinched for time and so we couldn't open the door for discussion, but we'll do it today I'd like to begin this session by registering the names of those who wish to participate in the debate. Registrations should have already been made with Dr. Hassan Hathout yesterday but if you don't mind brothers, we can immediately start registrations, and we'll open the door for discussion with a maximum time limit of one hour, then we proceed to today's agenda as drawn up.

Chairman, Dr. Hussain Al-Jazaeri

We have 15 names for comments and discussion.

Sheikh Badr Al-Metwalli

In the Name of Allah, the Rahman, the Merciful. Our sons the doctors have cleared themselves from blame and brought their problems forward to be critically examined and decided upon by Muslim jurists, and consequently matter now rests with the jurists. I say, and Allah is the Only Guide - There are certain things on which there is no disagreement and we should not waste time discussing them. The principle of keeping a secret is one that is taken for granted in the Sharia and in Law at any level; So we should not waste time in discussing it, demonstrating its necessity or indespensability...etc.

The second point is also one taken for granted, namely, the principle of Exception on the basis of what was said by the Prophet,

> *"He who ever takes an oath, and then sees that another is better than the first, should do what is better and make expiation for the (dissolved) Oath".*

Hence, there are certain things that should be excepted. The problem is how to make exceptions, how to make analogies, where lies the good and where lies evil. Allah, highly exalted and glorified be He, has willed this world of nature to contain good mingled with evil. Most often, there isn't that thing which is purely good or absolutely evil. Then there are factors that interlockingly affect the taking of decision : vantagepoint, prejudice, emotion and propaganda are factors negatively affecting adoption of the right stance. Therefore, I believe and Allah knows best, and this is a personal opinion, that side by side with each medical institution, and ad hoc committee of doctors and jurists should be constituted to study such topics. I can't figure a rule applicable to all the cases discussed yesterday, to have an all-problem rule is not feasible; for each single case there is tradition and for each case there are governing conditions that will either make it exceptionable or not, and that is why I am of the opinion that an expert panel of jurists and doctors must be formed to support every medical institution in all such problems, and a provision should be made that the opinion given by such an ad hoc, committee shall be either to make it permissible or impermissible, for the doctor to disclose or to guard that secret, since here lies the problem for which we'll be held responsible to Allah. There should be a committee to judge each case, but to adopt all encompassing rule is not practical. I think there isn't such rules that are all-embracing except those general ones in the Sharia which are conclusive.

Dr. Hamed Jami'

Sheikh Badr has spared me much of what I intended to say especially about things related to cooperation of Sharia thought with medical thought in the face of new developments in medical practices so that the opinion formed is both medical, scientific and lawful. I support His Eminence Sheikh Badr's proposal as regards concealment. I would have proposed it myself, but now I have moved from suggesting to advocating it. I would like to add that keeping of secret is compulsory in the Sharia and disclosure of it is prohibited - but secrets are of degrees. Mere disclosure of secret is perhaps, not allowed, yet disclosure of secret may extend to that which the Sharia forbids, namely backbiting. When the patient tells doctor something that does not disgrace him, then revealing it will be deemed disclosure of secret, which is forbidden by the Traditions stated.

If the patient has a defect and tell the doctor about it, revealing it will be backbiting. If this defect is something that is reported to authorities or individuals, it is then calumny. There are scales of prohibition for disclosure of secret which is all the way forbidden. Therefore what is the way-out? The way-out is that we can't set a rule that is applicable to all cases since for each single case there are governing conditions. Nevertheless, we have the Sharia way-outs, first among which is "pun". It means saying a word that has two meanings; one apparent and the other hidden from which speaker and listener understand what has actually taken place. An example of this is what happened to Ma'adh Ibn Jabal, who was sent on an assignment by Omar. When he returned his wife had anticipated, as all wives do, a present or something like that coming from the trip. He didn't bring her anything. 'Haven't you brought anything that husbands bring to their wives?' She asked. And he answered her 'There was a "controller" with me (which might mean his conscience). She thought Omar had sent an "observer" along with him'. She said 'Abu-Bakr had commissioned you, so had the Messenger of Allah, may the blessings and peace of Allah be upon him, before him. Neither of them had sent a controller with you; then Omar comes and sends one with you!

Then she disseminated the matter. However, Omar summoned Ma'adh, then asked him "What did you tell your wife?" "I told her that a controller was with me just to divert her attention from asking for a present after I had returned from the journey. Omar gave him some money and he pleased her with it. This is "pun", and it is a way-out provided by the Sharia, There is a Hadith or a tradition that says if you say something indirectly, that is a safe way to avoid a lie: This is one way out. The other is

Sharia prescripts. We have a fundamental rule of Sharia prescripts, namely removal of harm. From this rule many other rules were derived, among which is the rule that says: A lesser harm is permissible to prevent a greater one from taking place. In an event such as the one previously referred to i.e. when a person actually loses eyesight yet the eye itself is intact and he drives a car. There is no objection - I mean there is no objection in the Sharia to prevent occurance of a greater harm by a lesser one. With respect to matters involving disclosure of secret that represents a contravention, guilt or the sin of backbiting, ways-out acceptable in the Sharia, can be resorted to. We can't make a general rule that is applicable to all cases, for each one has its own circumstances. Therefore, I agree with the suggestion that the jurist and the doctor be joined in an institution or committee that looks into the circumstances of each case on its own merits.

Dr. Ujail Al-Nashmi

Yesterday our professors and honourable Sheikhs discussed the question of disclosure of secret. The topic was about the significance of keeping secret and some corroborative events from the immaculate sunna were stated. What is required, in my modest opinion - is to explain the nature of disclosing secrets, or what is called characterization in the Sharia of disclosure of secret in respect of explaining mandatory and circumstantial legal consequences. Mandatory legal consequence is explained in the light of necessity dictates recommendedness, prohibitability, reprehensibility or permissibility. The circumstantial legal consequence of disclosure of secret is explained in terms of its being a causative factor for a certain matter. If we can determine mandatory and circumstantial legal consequences of disclosing secret, we can know the legal consequence of new cases which are inquired about by our doctors.

Knowledge of the legal consequence on each of the cases submitted is not effected by giving each individual case its own legal consequence for these subsidiary cases, no matter how diverse and ramified they seem have a common denominator, namely disclosure of secret. So we suffice ourselves with giving the legal consequence of disclosure of secret. We have learned during our study of the science of jurisprudence fundamentals that determination of legal consequence of a branch or a divisional case is effected either through comparing it with similar juristic branches then applying legal consequence of given branches or the rule that govern these analogues and similar matters, and this is the method

adopted by the Hanafites - or, by comparing it, after determination of nature, with relevant fundamentals whether in the form of a prescribed text or a rule, which is the method adopted by the majority of jurists, I'll follow the Hanafites' method to get to a judgment on disclosure of secret.

The question of disclosure of secret, is comparable to two branches or two juristic questions, namely backbiting on one hand and testimony on the other. There are governing rules for both of them. Backbiting is prohibited by the text of the Sunna. Abu Huraira narrated that the Messenger of Allah, may the blessings and peace of Allah be upon him, said:

> *"Do you know what is backbiting? They (the companions) said: Allah and His Messengar know best. Thereupon he (the Prophet) said: Backbiting implies your talking about your brother in a manner which he does not like. It was said to him: what is your opinion about this that if I actually find (that failing) in my brother which I made a mention of? He said: If (that failing) is actually found (in him) you in fact backbited him, and if that is not in him it is a slander".*

(Related by Muslim).

Disclosure of secret is a kind of backbiting becasue as Dr. Hamed stated, it is mentioning what another person hates about himself. If it was not hateful to the patient it wouldn't be a secret. Disclosure of secret may be more prohibitable than backbiting for it is agreed by consensus that a secret must be kept. Moreover, it represents a betrayal of confidence and betrayal is a sign of hypocrisy as the Prophet said:

> *"the signs of a hyprocrite are three: when he speaks, he tells a lie, when he promises, he always breaks it (his promise), and if you trust him, he betrays".*

This indicates that disclosure of secret is part and parcel of backbiting, and since the fundamental legal consequence of backbiting is prohibition, then disclosure of secret is also prohibited.

Yet, in principle, there are exceptions to backbiting. Backbiting has been prohibited in order to protect certain legitimate interests and to prevent evil; if concealment of a matter that concerns people should ruin lawful interests or bring about evil, the fundamental judgment must, then be changed. Therefore, jurists and transmitters of prophetic traditions have mentioned exceptions to the basis for prohibiting backbiting.

Al-Nawawi enumerated six of them that entail change of legal consequence of backbiting from prohibitedness to permittedness; recommendedness or necessariness, for concealment, in this case, causes harm and harm should be removed. The same is applicable to secret disclosure which is liable to exceptions since the wisdom for inviolability and prohibitedness is safeguarding interests that concern the patient, someone else or the medical profession or for warding off evils that result from what has been mentioned. However, application of this legal consequence under new adverse circumstances that entail non-applicability, the rationale behind prescribing it will change from safeguarding of interest and warding off evils to the contrary, namely causing harm and affliction to patient or to other persons or the medical profession.

Hence the ruling should be modified so that it can help prevent evil, and realize lawful interest, and thus evasive legal devices are avoided, and harm should be warded off.

This first part of the question has been about determining the nature of disclosing secret. The other part which involves exception or change of the legal ruling on secret disclosure from prohibitedness to permissibility, leaves us faced by two questions: Is adoption of the legal ruling of exception necessary or not? And what is the basis or determinant for either case? If it is necessary, the pretext then is the principle of testimony. Testimony is obligatory Allah says:

AND LET NOT THE WITNESSES REFUSE WHEN THEY ARE CALLED ON.

Abstention from testimony is prohibited owing to ensuing harms such as forfeiture of rights and occurrence of wrongings'. Hence Allah, says:

AND WHOSOEVER HIDETH IT, HIS HEART VERILY IS SINFUL.

Accordingy disclosure of secret in these cases is a kind of obligatory act of testimony which entails sinfulness if abstained from.

On the basis of the aforementioned, cases in which disclosure of secret is necessary can be explained as follows:

First

If nondisclosure results in or possibile will result in harm to patient or to another party whether individual or group.

Second

If it resuts in or possibly will result in any adverse effect upon patient or another party in that the one who is ignorant of the secret may do things which he wouldn't if he knew about it.

This is in respect of the legal ruling of disclosure of secret in case of necessariness. In reference to the legal ruling on disclosure of secret, as an exception, in cases other than necessariness such as recommendedness or permissibility, disclosure of secret then, in my judgement, comes under recommended or necessary interest, assessment of which is left to the discretion of the Muslim doctor himself. He is to assess each individual case, and the method of allusions and punning is available for him to resort to, especially in cases connected with matrimonial affairs. Judging by his experience and knowledge of patient, nature of illness and the other parties concerned, he may deem it advisable to disclose secret or he may not, and honest opinions may diverge on this.

In conclusion, therefore the question of disclosure of secret is governed by the following rules and restrictions: Rule of necessity and need, rule of harm and of doing the lesser harm, rule of prohibition of evasive legal devices, rule of eliminating objection, rule of prevention of evils taking precedence over bringing advantages and rule of public interest in general. These rules and restrictions can supply answers to all questions regardless of origins and circumstances. Every individual event or subsidiary case is compared to them and legal rulings are deducted on the basis of the relevant rule.

Chairman Dr. Hussain Al-Jazaeri

Thank you Dr. Ojail Al-Nashmi now we have heard two viewpoints, one of which maintains that every case must be studied and that it has its own circumstances, and the other, of Dr. Ojail Al-Nashmi, tries to assemble the largest possible number of cases under certain rules. Each of these cases shows how it is important for the doctor to know matters of the Sharia more than he has known hitherto.

Dr. Ibrahim Al-Sayyad

The subject of confidentiality of profession was not incuded in the curricula of medical colleges. It was a loaned word from the West, until our professor Dr. Muhammad Ahmad Sulaiman, may Allah have mercy upon him. the first rector of Al-Azhar University after innovation, included it in the

courses of Faculties of Medicine. When he was invited to the First International Conference On Islamic Medicine in Kuwait, to talk about rules of medical profession, he wrote to us: There is no such a thing as "rules of medical profession. There are things invented by the West and by the Greek. But there are Islamic ethics and Islamic patterns of behaviour under which the Muslim conduct in any field of work, whether medical or else, is defined. Some Muslim doctors nowadays tend to give excessive awe and sacredness to what is called "confidentiality of medica profession". Yesterday we heard, in this place the terms "Sacredness of Professional Confidentiality".

There is no such a thing as "Sacredness of Professional Confidentiality". There is sacredness of text and of Sharia interests.

If we review what jurists said in their presentations yesterday, we will find the Hadith, that calls for keeping of secret such as the story of the Prophet with his wives and the secrets he confided to one of them, to which the verse

> *AND RECALL WHAT TIME THE PROPHET CONFIDED A STORY UNTO ONE OF HIS SPOUSES*

which comes under moral rules. There is also the story of Hazzal and the Prophet's address to him:

> *"Had you covered him with your garment..it would have been better for you".*

And the Hadith of

> *"He who sees a "private part" and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life".*

And the Hadith of trust

> *"If a man talks about something then he looks around, his talk is a trust".*

And the Hadith on slandering one's lineage and lamentation on the dead.

On the other side we find an explicit verse, namely

> *AND HIDE NOT TESTIMONY; AND WHOSOEVER HIDETH IT, HIS HEART VERILY IS SINFUL.*

and we find, in respect of openly informing patient of his illness and

forbidding him from mixing with the healthy Muslims, the Hadith:

> *"We have accepted your allegiance, so you may go"*

which was directed to the leper of Thaqif. We also find hadiths that clearly indicate exception:

> *"Gatherings are a trust except three: one in which blood is unlawfully shed, an impermissible sexual relation is made permissible..."*

and we also find the hadith that a counsellor is trusted, and among the duties of a trusted counsellor is to give advice in what he is entrusted with.

A court in Kuwait refused to give decision on a case when a doctor, who stood witness, refused to testify. The court excused him though he refused to talk about a certain matter, even though it was one of the four exceptions to keeping secret, which is permissible to reveal. It was possible for him to make recourse to but he refused on the basis of confidentiality of profession. The court didn't punish him; instead it just refused to give a sentence. This is in addition to what Dr. Al-Tabtaba'i stated two weeks ago when lecturing at the Law Faculty on professional secrets. Now, this indicates that we have reached to a point of breaking Sharia rules.

Therefore, what I want is that we get rid of what is called "sacredness of professional confidentiality" and go back to the fundamental rules which were stated in detail, for each case, by Dr. Ojail Al-Nashmi, without giving a special and distinctive status to the profession of medicine. Doctors have nothing to distinguish them from other professions. It is argued that their profession is characterized by having more privateness than any other profession. The legal profession has much more privateness. All occupations have privacies that enable workers to have access to an agent or a customer, exactly as the profession of medicine. So, let us apply fundamental rules that govern harm and interest and get rid of a distinct confidentiality of the medical profession. If we consider the presentation of Dr. Tawfiq Al-Wa'i yesterday, we find that he emphasized things that help safeguard the nation. Then we saw that his Eminence Sheikh As-Salami deemed permissible not to reveal AIDS cases that appear in a country if authorities in such a country don't mandate reporting it. Add to all this the event of plague when both the one who has already caught the disease and others who are faced with it are forbidden to get out of the plague - stricken area for the sake of protecting the Muslim nation, and protection

of Muslim nation is given priority to anything else. This is further supported by the Hadith of the Prophet,

"Plague offers martyrhood to every Muslim".

Therefore whoever remains within a plague-stricken area and doesn't get out, in order to safeguard the Muslim nation from harm, then dies of plague, is a martyr, for pains and hard ships he has patiently suffered by remaining in this place. Protection of the Muslim nation has priority over keeping secrets and over what they call "patient's right" and over any other consideration even if the laws of the country do not make a legislation that permits reporting of a certain disease. Therefore, I maintain that sacredness is only for text, sacredness is for safeguarding intentions of Sharia, and there is no sacredness for any confidentiality of a profession whatsoever.

Chairman Dr. Hussain Al-Jazaeri

Thank you Dr. Ibrahim Al-Sayyad. We have half an hour and eleven speakers, so I hope they will all be as brief as possible.

Dr. Omar Al-Ashqar

What my brother Dr. Ojeil Al-Nashmi referred to, namely determination of the fundamental rules from which legal rulings are deducted, is good in a research field. But in a field like this symposium, where doctors inquire about the legal ruling of specific issues, it is difficult for them to understand or comprehend determination of fundamentals in Sharia in such questions. It is the jurist's job to determine by himself, then explain subsidiary cases for whoever inquires. So, I suggest that jurists discuss subsidiary problems and questions because doctors want to know the legal verdict.

Yesterday, I referred to some subsidiary subject. I won't speak again about them, but would like to add some thing about the case in which the doctor knows that a female patient has committed fornication. The judgment of the Sharia is that he must not report the matter, for proving crime of adultery or fornication is effected in a certain way namely by bringing forward four witnesses or through confession. Comment made by Sheikh Abdulrahman that pregnancy is proof of adultery is, I think, not correct. It is a presumption. Yet, she might have been forced. She might have been slept with unawares as it happens nowadays. Pregnancy might have taken place by means other than fornication. In short, there are other

possibilities. This is unless she confesses. This question does not have consensus. Sheikh Abdulrahman, I guess, has confused this with the case of one to whom a child's kinship is attributed whereas husband has been away for years from wife. Yes, such a child is not attributed to him. But the question is about pregnancy and whether it is deemed a viable proof of adultery. This is a controversial question among the Four Imams and followers. With respect to the question of adultery, the doctor should not report it - Sharia wants that adultery should not be publicized. If it is publicized, everyone who talks about it without having a proof is flogged. If it takes place in an isolated place that is not known by anybody, and consequently is not talked about by anyone, it will harm no-one except the perpetrator. Otherwise, if it is made public it will be like a filthy pond which sends out unpleasant smells. This is not comparable to the case of epileptic person, the case of alcoholic aircraft pilot or addict or epileptic car-driver. This is quite a different subject.

The instance presented by a doctor in his paper about permitting drinking wine for an alcoholic by adding a nauseous substance to it in order to make him loath drinking alcohol, the Islamic method, I believe, is not like that. Making something hateful to somebody is attained by two methods; either through a perceptible way, or by explaining effects, results and harms of alcoholic drinks. This is what the Sharia has done when it successfully changed the erroneous attitude of first Muslims from that which had generally been held by the Arabs who considered having alcoholic drink a sign of virtue, civilization and progress.

They used to chant this - there is no poem in Arabic poetry whose author does not chant the praises of alcoholic drinks. Sharia changed this when Allah, sent down the verse

> *THEY ASK THEE OF WINE AND GAMBLING. SAY THOU: IN BOTH IS A GREAT SIN, AND SOME BENEFITS FOR THEM, BUT THE SIN OF THEM IS GREATER THAN THEIR BENEFIT.*

If the perpetrator of crime doesn't have any qualms about doing it, cure is, then, difficult, very difficult. If we could create a hostile psychological attitude towards alcoholic drinks, treatment by a doctor would be possible.

Another example: A man asks a doctor about a female patient - with a certain problem - whether he could marry her. I think the best thing for the doctor is to keep silent. If he says that she is fine and there is nothing wrong with her (falsely), when the man marries her and discovers the defect, he will have cheated him. And if he tells him that she has such and

such a thing, he will have disclosed her secret. "Religion is advice". He should not cheat him nor disclose her secret. So he can keep silent and the man can get information from sources other than him and the doctor is not to blame if he assumes this attitude. If the doctor knows that her illness is due to fear of her husband, informing the husband about the cause of the wife's illness is necessary for treatment.

Another example. The informer who uncovers people's secrets then nagging feelings of guilt and uneasiness begin to bear down on him to an extent that it poses a problem. Treatment for such a case, in my opinion, is that the doctor explains to him the Islamic method for spying. Sharia makes it permissible to spy on enemies and criminals, but not on the guiltless. When he is aware of the limits as prescribed by the Sharia and operates within them, the uneasiness he feels will no longer be there.

With respect to a woman who is impregnated by someone other than husband and wants abortion, it is advisable that she does not add another crime to the first one, for this new crime will, in turn, affect her and burden her conscience ever after.

Dr. Ahmad Al-Qadi

It is apparent that the course of discussions of yesterday and today focuses on the two alternatives - the first of which is concealment of secret, which is the basic attitude - and the second is disclosure of it to prevent or avoid ensuing harm. I want to concentrate on a third alternative - i.e. avoidance of resultant harm without disclosing secret. This alternative has been touched on by some fellow - doctors and ulama yesterday and today. Yet I see that some elaboration is needed. The drug addict aircraft-pilot, for example - The third alternative for him, I believe, is to give up the job voluntarily, then prove serious about abstinence from drug under medical help and take up another job. And the patient, who fears that the rest of family will catch his disease, should isolate himself, also voluntarily, from his family. These solutions which belong to the third alternative add another burden to the doctor. Yet, the doctor's responsibility is not restricted to treatment, rather it includes taking the role of a reformer and an educator and may include that of follow up as he must be sure of the commitment of the patient to this volitional third solution. This, in my view, is not a bad thing for responsibility is proportionate to the degree of knowledge, and if the doctor wants or allows himself to have more knowledge by hearing people's secrets, he must, then, bear the consequential responsibility, or else give up this profession which burdens

him with additional information that increases his responsibility. I just wanted to focus on this third alternative, namely that our concern be channelled to finding solutions and this requires thinking, observation and following up on the part of doctors.

Dr. Essam Al-Sherbini

Fellow participants, both jurists and doctors, have spared me most of what I intended to say. The big advantage of these symposia and of the previous ones and of those which, if Allah so permits, will follow is that they increase doctors' awareness of juristic and legal matters of the Sharia that are connected with their profession. They also assure them that jurists are knowledgeable about medical details and base their judgment upon them. Yet, new issues will ever keep emerging even after we know the law and are acquainted with jurisprudence. Emergence of new issues and the consequent need for knowing relevant attitudes and legal rulings are not faced only by the doctor, but also by the jurist and the legal man. Therefore, the solution, as Sheikh Badr suggested, is that a standing ad-hoc committee be constituted to refer to in such matters. What I'd like to add is that there is a committee on professional ethics in every medical institution. But it may be active and functioning and may be inactive. Everything that happens in hospitals or clinics is subject to the work of such committees. What I suggest is that these committees become active and effective in every medical institution. It is not important that each of them includes a jurist. It will be enough to have a committee of expert and knowledgeable doctors to refer to in matters brought forward by doctors as well as to keep watch over their work. Those are people of experience in hospitals. Then a juristic committee on the ministerial level is formed for reference in such matters.

Dr. Hassan Hathout

I completely disagree with whoever calls for divesting medical profession of its uniqueness. The codes of ethics of the medical profession had preceded divine legislations. When these legislations came they took and stressed what was good in such codes. I thought that our debate, since yesterday, has been too limited for it has discussed the subject of secret in too general a manner whereas I want to go beyond that to discuss its uniqueness in the medical profession. I maintain that the medical profession does differ from other professions. Which profession does not accept justice as a supreme ideal? But, if the doctor seeks justice

as his goal, he is a failure as a doctor, for doctor's work is not part of Allah's justice but he is only a means of His mercy. The mercy that covers both the benefactor and the malefactor. The object of a judge is to judge and be just, and the object of an officer is to fight enemies, but the object of a doctor is to treat both foes and friends. And if the murderer of my father comes to me for treatment I wouldn't be able not to live up with his expectations and neglect him, whereas if he goes to an architect to have his house built, the architect could apologize, or if he goes to a seller to buy he could also apologize.

Therefore, the medical profession has a special uniqueness and the confidentiality in it is a basic corner which when damaged the whole profession collapses. If we are keen on safeguarding the interest of the nation, then we should regard this interest as a fraction with a numerator and a denominator, the numerator representing combat of crime, reporting an error, prevention of spreading of adultery and so on. The denominator is also essential to the interest of the nation. When people get sick they go to the doctor and if they has the slightest doubt that the doctor is not worthy of being entrusted with secrets, it will mean that the medical profession has forfeited a vital motivating force for its existence. This is the gravest thing; for a nation whose patients are doubtful of its doctors will pay a doublefold price from illnesses patients suffer. The basic element of treatment is that the patient provides me with the truth about his case exactly as though he is talking to himself or confiding something to his Lord. If he does not trust me, he won't tell me the truth and thus I will deprive the nation of much more benefit than he does if he hid anything. Exception however, is possible if this tremendous interest could be surpassed by another more urgent consideration. Here texts are a must, i.e. the cases in which the doctor is permitted to disclose must be enumerated specifically and exhaustively and not just providing some examples. They are to be made known publicly and the patient should be aware before visiting the doctor that such and such are disclosable matters. This must be known to all people. Yet, the original rule remains with its sacredness intact, the sacred value of regarding secrecy.

Dr. Mahdi Ibn Aboud

This is the second time I see the floor given to one who does not request it. I have heard some comments that I'd like to have said, especially in respect of the word "mercy" which I heard from Dr. Hassan Hathout just now. I'd like to indicate two points, point one is that the patient

should be treated as being with a body and soul at the same time within a society that has a body and soul. Point two is that "above every knowing one there is a knower" We are talking about the juristic aspect as if jursits' knowledge has become fully consummate and is no more increasable nor decreasable; and we talk about the doctor as though his knowledge has been utterly perfect and become divine, and will not decrease and this impossible for a human. Disclosure of secret is not forbidden in matters of decency only but also in ones that may ruin a person or destroy a pillar of an entire society.

Let us take schizophrenia, for instance. If the doctor diagnoses an illness as schizophrenia and discloses it, it means that he has hastened making the judgement public, thus detrimenting his patient, profession as well as his own standing in the society. Yet, the doctor, if young, may take this hasty action as he is still inexperinced. But if he gains enough knowledge and experience in the field of medicine, especially if he does not confine himself to his speciality for instance, he does not restrict himself to skin diseases in respect of the kind of speciality I call "the superficial division of dermatological medicine", he can perform a risky diagnosis unawares, then some indicators of schizophrenia such as kleptosis which can be treated in a few weeks, appear, then symptoms of schizophrenia, that kleptosis has indicated, appear, then if he is in the habit of not consulting neither other doctors nor jurists and rashly discloses the secret, he will, thus, have done a thing so dangerous first to his profession, secondly to the patient and thirdly to the society. Therefore, the committee suggested by his Eminence Sheikh Badr is one of urgent imperatives for permanent study of cases and not only for consultation at all times. The doctor at ten in the morning is visited by a patient and he wants to take a decision, he is not to get out and leave the patient in order to go to the committee for consultation. This depends on what is called good morals of the doctor. First giving priority for secret keeping over disclosure, second mercy is given precedence over decisive, hasty actions and diagnosis will be confirmed or changed.

Dr. Abdulmonem Zain Al-Nahas

It is evident from the detailed memoranda which were presented yesterday that the doctor is, legally and in the Sharia, not bound to disclose patient secret for it is a kind of backbiting. Yet, there are exceptions, which were indicated by his. Eminence Sheikh Tawfiq Al-Wa'i in cases that justify it. Disclosure of patient's secret is for the patient

himself, his family and official authorities. When we debated the Law on Proof in Sudan, we reviewed the extent of responsibility of trustees. The Sudanese Law on Proof stipulated in Article 31 that testimony of trustees such as doctors and lawyers shall not be acceptable in respect of information they obtain by virtue of profession except if the one entrusting the secret permits or when the secret is related to committing a crime whether already perpetrated or not. If the doctor knows that a crime has been committed he is legally bound to report it, otherwise if any doctor is summoned by a court to testify or to disclose the secret behind illness of patient, he can invoke this provision and abstain from giving an answer to court out of sacredness of the status of trustees in general, and not for sacredness of confidentiality of medical profession. Lawyers, doctors authorized agents and others, have some immunity because they know something others are not permitted to know. As for the exception on the basis of perpetration of a crime which is stated in the Sudanese Law; when the doctor, like any other citizen, knows about a crime he must report it, if he doesn't report he will be regarded as on who screens a criminal. The provision, in my opinion, is in conformity with the letter of the Kuwaiti Law which stipulates some exceptions in this connection, justifying protection of doctors in general, along with other exceptions referred to in the Kuwaiti Law. I agree with my brother Hassan Hathout that there should be a clear rule and not just a committee to discuss each individual case and according to circumstances. The symposium should make recommendations applicable to the medical profession all oveer the Islamic and Arab worlds, and by which doctors associations and ministries of health in the Arab and Islamic countries should abide. Existence of such committee means that it will discuss things that may or may not emerge. But the general rule can be resorted to for help and for guidance in all cases along with the exceptions that justify them.

Dr. Abdulrazzaq Al-Samerra'i

I'd like to refer to some examples. A patient has a deep cut in the back of the eye and vitreous fluid comes out along with bleeding but the front of the eye is sound. The patient has an operation and consequently the outer appearance of the eye is flawless but the eye does not see and the patient asks that his wife is not told. Another patient with a similar case but he has a fiancee and asks that his fiancee is not informed. The relatives of this patient insist on knowing the truth; can they be told, is it permitted or not?

Another example; the aged, whose eyesight gets weak due to

cataract which may constitute a temporary impediment. They have driving licences valid for years, in Kuwait for example it is 10 years, from age 59 to 69, the eyesight dropped to 6/36 or less. Such a person should not drive a car, is it possible to inform authorities to withdraw the licence on a temporary basis? Informing is a kind of virtue. Look how Sayyeduna Abu-Bakr behaves when the Prophet, may the blessings and peace of Allah be upon him, tells him a minor secret, and Anas Ibn Malik does the same thing, and all other similar stories can be invoked as persuasive sources but they have not the strength of authenticity of texts. We need to say that the doctor is not permitted to disclose secret, for the patient should not be harmed. The Prophet, says:

> *"without harming and without mutual harm"*

and Allah, says:

> *AND THOSE WHO ANNOY THE BELIEVING MEN AND THE BELIEVING WOMEN, WITHOUT THEIR EARNING IT, SHALL SURELY BEAR THE GUILT OF CALUMNY AND MANIFEST SIN*

And the Prophet, says:

> *"The faithful is he whom the people can trust with their lives and property, and a Muslim is the one who avoids harming Muslims with his tongue."*

And he says:

> *"A Muslim is the brother of another Muslim, so he should neither oppress him nor hand him over to an oppressor".*

And other prescribed texts to which I'd like we consult in order to learn that medical secret must be kept and that the doctor should not divulge this secret except in certain cases.

And as to the other cases where disclosure is permissible, I propose that a committee is constituted to refer to for decision. This is a good thing but still it is not a solution for the everyday problems which confront every doctor every hour. This is not possible. We want to put before the doctor general outlines which he can refer to and consult his conscience when he is faced by such problems. What I figure, after I have heard all our professors, that the cases in which it is permissible to disclose a secret are divided into two divisions and two subdivisions.

Division One:

Prevention of an evil from befalling the society.

Subdivision One:

Prevention of an evil from befalling an individual.

Division Two:

Securing a benefit for the society.

Subdivision Two:

Securing a benefit for an individual.

What I think is that the doctor "must" disclose secrets in cases that come under Division One and Two. But he "may" disclose secrets in the subdivision cases. In cases other than these he "is not" permitted to disclose secrets.

Dr. Yehia Nasser Khawaji

I have something to say about disclosure of secret of the sterile husband's wife: If the doctor finds out that the sterile husband's wife is pregnant and the husband is a doctor who knows well that he is sterile, if she returned truly penitent to Allah, it is better not to expose her, and the husband either attributes her child to himself if born alive, or disavow paternity. If he attributes the child to himself he becomes his son, and if he disavows him he remains fatherless. Yet, in this case if the husband, who is a doctor and knows he may ask to analyse the child's blood in order to decide whether it matches with his or not, and so how can he attribute the child to himself when he is quite sure that he is not his son and when he also knows that he has been married to this woman for ten or 12 years, and he is a doctor? I say that he is not an ordinary person, he is a doctor and he knows, and he may take his semen the next day and analyses it then knows definitely that he can't produce any children; if this is the case how can he take this child to himself as if it were his son? The choice is his in this case.

The second point is when a colleague of the doctor finds out something done by the latter, he should promptly report the matter to authorized officials because this is an act that is against honesty and not a

private matter that only concerns the perpetrator. So, whoever knows about his affair must report it to superiors and not tell people; only his superiors.

The Third point is when the doctor knows that the father of a family has AIDS for instance, he should inform wife because you cannot be sure of such a patient. You can tell an AIDS patient : Don't touch your wife. But when there is sexual excitement he will sleep with wife and infect her and she is not aware of his disease, and he can't resist his desire. There it is better to inform his wife so that she does not allow him to make love to her until he is cured of his disease.

Chairman

Thank you Dr. Yehia, Now time is over and we still have two speakers.

Dr. Tawfiq Al-Tamimi

One of the causes of our good meeting is, perhaps, the non-existence of a sufficient number of ancient Muslim doctors' tradition in this connection. The reason is that they were jurists besides being doctors. So doctors nowadays need to get together and have discussions about these matters for they have knowledge and are competent to act, when facing these predicaments, armed with knowledge of jurisprudence. I hope this meeting, when it closes, will make recommendations or a booklet for doctors so that it helps them understand juristic specific matters which are connected with medical practice.

The doctor, as he is entrusted with secrets, is also entrusted with the health of the individual, the family and society, and there should not be any contradiction between the two functions. I think that the Sharia embraces all medical practices. The morals derived from the Qur'an are the most perfect. And I don't think that the Qur'an and Sunna will be unable to grasp the significance and necessity of maintaining the confidentiality of profession, and whether it is sacred or not. I think if we stick to Islam we won't be in need of other sacredness outside the purview of the Qur'an and Sunna. There is a necessity to make general rules for doctors to refer to general juristic rules of confidentiality of profession and of other matters are also necessary.

With reference to the subject of confidentiality of profession, there are many governing rules, such as; entrusting with secret, "without harming

and without mutual harm", giving priority to public interests over private interest, giving precedence to prevention of evils over obtainment of benefits. "He is not one of us, he who drives a wedge between man and his wife" and "a person should help his brother whether he is an "oppressor or an oppressed". All these things can be of use in explaining the rules that doctors should follow in respect of confidentiality of profession and as regards possibility of disclosing secrets under certain circumstances.

Chairman Dr. Hussain Al-Jazaeri

Thanks for Dr. Tawfiq for this nice "elaboration".

Sheikh Muhammad Mokhtar Al-Salami

The question of sacredness of the medical profession has been raised. Every speech must start with conceptions clearly outlined and they are not to be mixed up. To make sacred is to make holy and free from any worldly elements. When we attribute holiness to Allah, this means that Allah is above anything and the inadmissibility of any imperfection. And if we say that the Qur'an is sacred it means that we negate occurrence of any alteration, distortion or change, by addition or by deletion. If this is the meaning of sacredness, then I don't understand what is meant by "medical profession is sacred" Medical profession is respected and its position in the rank of values is among the highest in view of the fact that its subject is Man, and consequently problems with which medicine is faced and which are presented to the doctor are as complicated as both the science and the profession are. I indicated yesterday that the doctor in some cases may get to a kind of internal contradiction as to whether what he is about to undertake is prohibited or permissible, should he inform or keep silent? Giving general rules is not enough and doesn't help the doctor find the required solution in most cases. Therefore, jurists should provide judgments or, in the light of the cases provided by doctors, undertake the task of giving legal consequences and opinion of the cases that have been presented by doctors. After I said this yesterday I added that new issues keep emerging, so it is necessary that all cases, which raise questions in the doctor's conscience, must be recorded in every hospital or clinic in order to determine the Sharia opinion. This indicates that the question will always be raised a new and our search for an answer might be taken to justify that the profession of medicine is not prohibited for us to interfere with and there is no sacredness. No one can accept that.

Another issue remains: namely the issue of AIDS. I touched on this question yesterday. It is a new issue that brings about new hazards to the degenerated human nature for which a solution will not be found unless it frees itself from immorality and goes back to the path of Allah.

I said that the doctor must tell AIDS patient the truth so that he doesn't donate blood or have sexual relation with wife or even kiss her on the mouth, with respect to reporting the matter to the state I said the case must be recorded in the register of existing diseases that appear in an area monthly.

But as to informing the state of governmental agencies that so-and-so is an AIDS patient in case that there is no existing law which specifies such course of action, this, I think, is not just disclosure it is an unwarranted scandal, for if there is no law that stipulates informing, what will the authorities have to do with such a person? Therefore, disclosure will result in a scandal and will not be useful in treating or protecting society, the doctor is then forbidden to disclose.

Disclosure is bound with public welfare. Finding out after examining him in his clinic, that so-and-so the son of so-and-so is an AIDS patient is not enough reason for the doctor to inform authorities. The government should makes a law that makes it incumbent upon the doctor to report such cases and inform about the person in question in order to take the necessary measures, and in this case the doctor must abide by the law, because everyone must abide by and observe laws that serve public interests, including the community which is part of public interest without which Allah would not have given us reins of power. But to inform without any justifiable reason is just a kind of scandal and impermissible disclosure.

This is what I meant by saying that AIDS is not to be reported to concerned authorities when there is no law that stipulates such an action. This is meant to instigate legislators in all Islamic Countries and they should take the initative to protect the nation. This is their duty, and Allah knows best.



PART TWO

WHEN CONVENTIONAL LAW IS IN CONFLICT WITH ISLAMIC SHARIA



FIRST : MEDICAL PAPERS



THE DOCTOR'S ATTITUDE WHEN LAW CONFLICTS WITH SHARIA

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Introduction

There are three parties involved in this research, namely, Sharia, Law and Medicine. Therefore, it is necessary to define each of them so that we can determine its role when contradiction occurs:

1. Sharia:

It is a term which used to comprise the Islamic dogmas and practical provisions that Islam contains. But now it is allocated for the code of legal rulings deduced from the Book, the Sunna and Ijma' (i.e. unanimity of Muslim learned Ulama). Sharia is part of the prescripts of Allah, which reached us through the Prophet Muhammad. It is valid for every age and place. Sharia supplied general rules and leaves details and new things for ijtihad, i.e. independent reasoning and thoughout-out solutions. Allah highly exalted and glorified be He, says,

AND TAKE THOU COUNSELS WITH THEM

i.e let them think out solutions for emerging issues.

2. Law:

It is the code of rules which govern social relations and which the individuals are compelled to respect by public authority. Law is man-made and hence it is called conventional law and this is one of the most important differences between it and the Sharia.

3. Medicine:

It is a science and an art that is concerned with man's health and

cure.

How Do Doctors Think

Having been deeply engrossed in the realm of scientific experiment during academic years as well as in daily practice, doctors, in general, tend to search for the truth in the outcome of specific practical experiments. In their work, they keep away from non-specific, unseen or unknown things (which abound in Law and Sharia).

This stance has brought down many problems on them, especially after the great scientific revolution in the field of medicine and research, when issues requiring new legislations as well as independent reasoning and judgements have posed themselves. Among the most important of these developments are genetic engineering, organ transplant, sex change and other matters on which I do not want to expand.

Being more capable of interpreting these new occurrences and drawing defining rules, legal and Sharia men have tried to tackle them but opinions held by the two sides differed. Controversy, moreover, passed on to legal men and Sharia people among themselves.

Medicine as a science only, has nothing to do with Law or Sharia, but as a practice it cannot be isolated from them. Actual events have proved that medicine cannot be divorced from Sharia or Law. Medicine is concerned with the human body which has a sanctity inseparable from human relations which are closely connected with Sharia and Law. This relation calls upon researchers to consider responsibility of medicine for man who cannot, at present, do without the doctor and ignore acting upon cause and effect. What should the doctor's attitude be when Sharia conflicts with Law in any of the new things?

I beg to be excused from providing the answer for I am not a scholar to explain nor a jurist to give an opinion. But in this hastily compiled research I am going to review some exemplary experiences which I have come across, then leave them void of comment except for a humble opinion at the end.

Owing to my position as an official responsible for a health Zone where I am consulted by people working in health field whenever they encounter anything that obstructs their way or are baffled by a conduct of some patients or their relatives, I have had a good deal of experience. Yet, I am still unable to catch up with every development due to the dearth in

legislations that define limits and determine which is in simple terms understandable to doctors, away from generalizations and expatiation in opinions. For instance:

1. Examination or Intervention of A Doctor or Treatment:

Some men refuse to have their wives or close female relatives examined or operated on, however urgent an imperative the operation is, by a male doctor. On one occasion, at midnight a doctor had to call a woman doctor, who was off duty on that day, in a Maternity Hospital to perform an urgent operation on a woman whose husband had objected that it was performed by a male specialist. Now, the question is: should the doctor carry out an operation, in spite of husband's objection, if the patient is in danger and no woman doctor is available? And does the husband have the right to kill his wife in this way by rejecting medical assistance from a doctor just because it is "he" not "she"? And what is the attitude of Law and Sharia in this case?.

2. Requests For Abortion:

Some requests for abortion have been made to our doctors by husbands or wives whose children suffer some innate hereditary diseases. I recall some of these cases:

Thalassanemia major:

Here is a man whose children suffer from severe anaemia and enlargement of spleen. The young sufferer, whether a son or daughter, dies in the early years of life due to recurrent bleeding and inflammation. The father does not want to go into another painful experience and hope for children if he is to lose them after a short time. It is true that a small percentage of children escape the disease according to Mendel's Laws, but the rest are either victims or carriers of the disease.

The same rule applies to quite a few hereditary blood diseases such as heamophilia, Christmas disease, Von Willebrands syndrome and other similar diseases which are so far undetectable by prenatal examination. Nevertheless, embryos, in most cases, are afflicted by the disease if mother carries the genetic defect. Many people would prefer abortion to having a child who keeps suffering before their eyes then dies after two or three years from birth. What is the attitude of Law and Sharia towards this case? And is mother to be aborted?

German measles is also a problem if it attacks mother during the first months of pregnancy where deformation of embryo is a probability that cannot be ignored. What is the attitude of Law and Sharia in this case?

Abortion, according to my humble knowledge, is forbidden in the Sharia, a matter which is agreed upon by the consensus of jurists. Yet, opinions have varied from reprehensibility to prohibitability in the first months before breathing the spirit what, then, is the attitude if parents insist on abortion after pregnancy exceeds this period.

3. Consent of Guardian of the person:

A. A child is bedridden in pediatric ward suffering from hydrocephalus. His father has objected to operating on him in the first days following birth and preferred letting him die to raising a child who may have some malformation. Child's head kept enlarging till it has become twice as much as the body.

Surgical operation is useless now as he is in the throes of death and his sight is heartrending. Does the father have any right to murder his son in this way? And what do Sharia and Law say now that the doctors hands have been shackled?

B. A six year old girl with kidney malfunction and calcification and is in need of regular hemodialysis. Her father refuses this necessary treatment for he is a soldier in the Kuwait army, resident of Al-Riqa and is financially incapable to move her every three days to Mubark Hospital for hemodialysis. I tried to convince him that we were ready to undertake this until a good kidney was found for the daughter, but he totally refused to have the hemodialysis done saying that he had a son who died in a similar operation and threatened that he would hold us responsible for consequences in case we took her to Mubarak Hospital, and signed a paper of refusal. Seeing that the girl's condition was too bad, the proportion of urea in the blood had been about 400 and that occurrence of some adverse consequence was possible, doctors refrained from undertaking any action and came to consult me. I contacted the Ministry undersecretary who gave orders to move her to hospital taking full responsibility in spite of father's objection.

The question is: Is there anyone who can protect the doctor against blame if he takes such responsibility, and what is the opinion of Sharia? Law has an attitude but it is not comprehensive. Article 30 of the Kuwaiti Penal Code states in Clause Two "Consent obtained in advance from

guardian of the person is sufficient if patient's will is of no consequence legally. No consent is required if it is necessary to perform medical and/or surgical operation urgently or if patient's condition make him/her unable to demonstrate his/her own will and it is not possible to immediately obtain consent of patient's guardian" We are talking about objection of guardian and, even more, his signature on the file forbidding medical intervention and holding hospital responsible for consequences, and not only for non-consent on his part. And what if surgical intervention has hazards such as death in case of the girl previously stated.

C. During an ordinary delivery, the fetal condition deteriorated and it developed 'fatal distress' and consequently it was necessary to do a caesarean section in order to save it. But the father refused thus sacrificing the child, whereas the child had an almost-guaranteed chance of survival if operation was performed? Does a father have the right to toy with his son's life with such cruelty, and what is the opinion of Law and Sharia?

These are but some examples let alone those exciting developments in the realm of medicine and research. It will not be an act of imagination to see gigantic human beings and animals(1). We have recently heard that science has managed to develop animals many times larger than normal sizes. Scientists at Addison Centre for Animal Science Technology have achieved amazing results in evolving some animals and mice into sizes three times larger than normal through genetic engineering. It will not be so surprising if, some day, we see assembled D.N.A. inserted into human body for production of giants and huge people we read about in the Arabian Nights. How many a science have brought about horrendous things

AND THEY HAVE LEARNT THAT WHICH HARMETH THEM AND PROFITETH THEM NOT

(Surat Al-Baqra)

still, these are newly developed medical issues.

What is, the attitude of Sharia and Law toward these grave new things? I leave the answer to our reverend ulama.

What Doctors Should Do When Sharia And Law Differ

If we had a scrutinizing look into our laws all over the Islamic countries, we would lamentably see that most of them are derived from

European Laws which do not care about Sharia matters, for people there do not adopt our religion and do not concern themselves with what concerns us.

And since we embrace Islam and live in an Islamic country whose constitution states in the second article "The Religion of the state is Islam, and Sharia is the main source for Legislation", we must follow God's statement,

> *THEN IF YE DISPUTE IN AUGHT REFER IT UNTO ALLAH AND THE MESSENGER.*

Here is the judge and the arbitrator to whom we must refer at time of controversy. This in turn compels us to pave the way for doctors. This is not workable except when there is a joint panel of erudite Muslim ulama for deduction of legal rulings that cover most of our needs for legislation so that the doctor is not at a loss when faced by new occurrences of the modern life for diseases do not wait for long, and hours and minutes are crucial in taking decisions regarding medical intervention - and so that the doctor does not sin or regret by carrying out an action the Sharia and Legal subtleties of which are unknown to him.

THE ATTITUDE OF A MUSLIM DOCTOR VIS-VIS SHARIA AND LAW

Dr. Abdulrazzaq Al-Samerra'i
Eye Surgeon
Ibn Sina Hospital, Kuwait

Allah, said:

AND WE HAVE SENT DOWN THE BOOK UNTO THEE WITH TRUTH; AND CONFIRMING THAT WHICH HATH PRECEDED IT OF THE BOOK AND A GUARDIAN THEREOF. WHEREFROM JUDGE THOU BETWEEN THEM BY THAT WHICH ALLAH HATH SENT DOWN AND FOLLOW THOU NOT THEIR DESIRES AWAY FROM THAT WHICH HATH COME TO THEE OF THE TRUTH. UNTO EACH OF YOU WE APPOINTED A LAW AND A WAY

(S52:V48)

AND THEREAFTER WE HAVE PLACED THEE UPON THE LAW OF THE RELIGION, SO FOLLOW IT THOU, AND FOLLOW NOT THE VAIN DESIRE OF THOSE WHO KNOW NOT

(S45:V18)

He, glorified be He, also says:

WHEREFORE FEAR NOT MANKIND BUT FEAR ME

(S5:V44)

AND THOU WAST FEARING MANKIND, WHEREAS ALLAH HAD A BETTER RIGHT THAT HIM THOU SHOULDST FEAR

(S33:V37)

SAY THOU: IF YE ARE WANT TO LOVE ALLAH, THEN FOLLOW ME, AND ALLAH SHALL LOVE YOU AND FORGIVE YOU YOUR SINS; AND ALLAH IS FORGIVING, MERCIFUL. SAY THOU! OBEY ALLAH AND THE MESSENGER; IF THEREAFTER THEY TURN AWAY, THEN VERILY ALLAH LOVETH NOT THE INFIDELS

(S3:V31,32)

Truthful is Allah the Great. Doctors always are mindful of people's

interests and they endeavour to realize them. Hence they would be pleased if their work was brought into the light of Sharia.

Doctors have close contacts with Ulama regarding many new occurrences for the purpose of thoroughly examining them. Weighing them in the balance of Sharia and deducing juristic rulings from prescribed sources of the Sharia, namely Qur'an and Sunna, so that doctors can act upon and seek guidance in them for the good of the patient, and meanwhile use the rights entitled to them within the framework and rules of the Sharia and away from legal liability and examination of conscience.

Many adverse things can occur not owing to doctors' wilful acts, for they can do nothing to prevent them, nor a better course of action is available for them to resort to in such cases. Doctors, however, are not legally held liable for them. There are few cases that go wrong in spite of the great efforts exerted by the doctor to have successful results which will of course please him. To cite but a few examples: some surgical operations are performed for removal of cataract, transplantion of cornea or to reduce eyeball pressure for glaucoma patients. Operation is apparently quite successful, then next day or after a couple of days internal inflammation of the eye occurs and the doctor does his best to cure it. Sometimes though the eye is cured and disease is no longer there, eyesight is lost. In other cases disease hangs on and does not respond to treatment causing intense disability and severe pain to patient the fact which compels us to remove the eye in order to kill pain and improve health condition. Now, the patient has not only lost eyesight but also the eye itself as a result of this operation. There are other very rare cases where patients suffering from precariously uncontrolable blood pressure along with similarly uncontrolable diabetes, and who are mostly reckless, have sometimes full-scale cataract or glaucoma and therefore in need of operation either for removing cataract or reducing eyeball pressure. This of course is done after blood pressure and diabetes are regulated. Some of them experience severe ophthalmorrhagia during operation in spite of care on the part of doctor to avoid that and to do his utmost to clean up and wash out the bleeding but sometimes in vain. Bleeding at times needs weeks or even months to be drained dry, meanwhile it badly affects the eye destroying optic cells and tincturing cornea the fact which renders vision impossible.

Some other cases develop into posthemorrhage glaucoma and the eye becomes very painful in spite of all efforts exerted, to reduce eyeball

pressure or to stop pain. Eventually nothing can be done but to remove the eye and thus patient loses both the eye and vision as a result of this operation. This all happens while the doctor is away from legal liability, but he is always under the scrutiny of their conscience and fear of Allah as whether he has done wrong or has been delinquent in his work to save the eye from inflammation or opthalmorrhagia and whether he could have prevented subsequent blindness or if he has made a mistake by removing the ailing eye whereas patient has hopefully craved for having eyesight restored after operation; or whether it was Allah's will that he should never see light again and thus live in permanent darkness. The doctor has surely exerted every conceivable effort and was never negligent, but to no avail.

There are other cases in which the doctor never, of course, intends to cause a harm or damage, but rather means to treat a badly diseased eye. Treatment sometimes is done by injecting drug beneath conjunctiva or in the back of the eye and it very rarely happens that a needle goes ito eyeball and results in a laceration, poisoning and inflammation of internal parts of the eye and, in spite of all efforts to save the eye, subdue inflammation and stop pain or prevent damage, the patient almost always loses vision and we sometimes are forced to remove the eye. The doctor is not answerable and is away from legal liability, but still has a awkward feeling of guilt and never stops thinking about the error he has done and the eye he has ruined instead of cure. Is the doctor to be held responsible by the Sharia and thus pay prescribed indemnity?

In yet another case a female patient suffering from a chronic disease in the eye (uveitis) had been treated by cortisone until inflammation was suppressed and patient continued treatment with a lesser dose of drug (5mg) to prevent recurrence of disease. The patient was three months pregnant when she requested a medical committee wanting abortion, or else for the drug to be discontinued, saying that the tablets may harm embryo. Yet this drug has never been proved to adversely affect the fetus, whereas discontinuation is detrimental to the eyes and will lead to recurrence of inflammation.

Furthermore, a gynaecologist, who now attends this meeting, affirmed that the drug would leave no harm on the embryo and refused her request of abortion. The patient, however, went elsewhere and had the abortion while she was on her fourth month of pregnancy!

A patient (an Arabic language teacher) came to the eye medical committee asking for permission to have less working hours for he had an

eye with feeble vision - less than 6/60 due to dense opacity in the cornea, vision measurement of the other eye was 6/24 when he was told that the driving licence would also be withdrawn, vision reached 6/12. Patient had a driving licence legally valid for more than five years, but eyesight being less than legally required (law requires minimum measurement of 6/12 per each eye or 6/6 for one eye) he was not in a position to drive a car, and permitting him to do so would result in harm to others. Such cases are numerous!

It is the duty of the Muslim doctor to seek guidance in Ulama's opinions and to discuss with them matters and cases encountered during daily practice so that they can deduce for them evidence from practice so that they can deduce for them evidence from prescripts of Sharia which will help them to carry out their work for the good of patients. It is also necessary to consult opinions of pious legal men and discuss with them some matters we always confront. In this way doctors will be able to be conversant with the Sharia standpoint, which is the principal one, as well as with legal aspects which we cannot ignore nowadays.

The duty of the doctor is to be honest, truthful and efficient; give the profession its due along with being fully conversant with its subtleties and do every conceivable effort to improve himself professionally, endeavoring for the good of patient and be very careful when conducting examination, not to mention accuracy in diagnosis and prescription.

AND SAY THOU! WORK ON! ALLAH BEHOLDETH YOUR WORK AND SO DO HIS MESSENGER AND BELIEVERS

(Truthful Is Allah The Great)

DISCUSSION ON MEDICAL PAPERS

'WHEN CONVENTIONAL LAW DIFFERS WITH SHARIA'

Chairman Dr. Hussein Al-Jazaeri

The floor as a matter of fact is requested by a number of participants but a quarter of an hour has once again lapsed, so we hope, if Allah so wishes, that these subjects will be discussed in the Drafting Committee and whoever wants to add any thing is kindly asked to come to the Drafting Committee.

We hope that we will be able, in the Drafting Committee, to make a set of general rules that can generally assist the doctor, with due regard to the idea of the necessity of having a committee to refer to in problematic matters - Anyway let us begin the work of the second day by requesting Dr. Salah Al-Aboog to take the floor to deliver his presentation on the difference of Sharia with Law.

(Papers Section, Page No. 205)

Chairman Dr. Hussain Al-Jazaeri

Thank you Dr. Salah. Now the floor is given to Dr. Abdulrazzaq Al-Samerre'i "The Muslim Doctor's Attitude Vis-a-vis Sharia And Law" (Page No. 211).

Chairman Dr. Hussain Al-Jazaeri

Thank you Dr. Abdulrazzaq Al-Samerre'i, I'd like to inform you that the Recommendations Committee will convene during lunch break at the meetings' hall of the library. There will also be a meeting for the Board of Trustees of the Islamic Organization for Medical Sciences at the meetings' hall of the Organization's Board of Trustees at three p.m. today. Now we open the door for discussion on today's topic and start with listing names of those who desire to participate.

DISCUSSION

Dr. Abdullah Basalamah

The fact, in brief, is that doctors have gained during studying medicine and during practicing for specialization some information about legal attitudes towards certain medical practices and they have also acquired, by the very nature of the profession, enough information about professional confidentiality. But the Muslim doctor, or any other doctor practicing within the Islamic world, is still short of certain information concerning the attitude of the Sharia towards some matters. About ten issues have been brought forward in this meeting, and I am certain that other new issues will be added. We, as doctors, hope that when this meeting is closed, written rules are made, explaining the attitude of Sharia towards some of the issues mentioned in these two meetings. Of course I mean special rules and, if possible, have some general rules added then have these rules printed in leaflets as the organization is known to have always been active. These booklets should be made available to Muslim doctors everywhere as well as to all doctors working within the Islamic world. This is the kind of achievement we doctors like to hear about or see written to help us in our practice and thank you.

Chairman Hussain Al-Jazaeri

Thank you Dr. Abdullah Basalmah. Now Sheikh Ezzuddeen Al-Khateeb.

Sheikh Ezzuddeen Al-Khateeb

As Dr. Abdullah kindly stated, we heard yesterday and today the questions that were brought forward but he underestimated the number of issues when he said that they were about ten.. I say that they were more than that.. Perhaps over twenty or thirty. Every question raised by any of the doctors here was meant to have the answer in a form of specific opinion. This means that each question is restricted to knowing the expert opinion, and opinion means providing judgment on a certain case. This makes me affirm that expert opinion does not mean rules nor making of

rules. Rules already exist in Islamic jurisprudence and related books; the Islamic library abounds with rules and precepts of Islamic jurisprudence. These rules never make doctors do without having answers for questions they raised. Answers must be definite. This means that for every question a clear-cut opinion must be given and issued in periodic leaflets. The Organization must have these opinions issued beforehand so that doctors can continuously be aware of the attitude of Sharia toward emerging issues. Omar Ibn Al-Khattab, was mindful of this aspect in matters concerning appointment of governors - A thief's hand is to be cut off: This is a Qur'anic prescript. During a meeting with some governers Omar, may Allah be pleased with him, asked Al-Mughira 'If a thief was brought to you, what would you do to him? 'I'd cut off his hand' Al-Mughira's answer came fast for he had a ready prescript at his disposal. Yet Omar wanted to indicate the significance of departing from general rules to taking circumstantial evidence into consideration whenever necessity arises, 'Oh you! you cut off his hand and I'll cut off yours, Allah has assigned us to rule people so that we can appease their hunger, provide jobs for them and cover their weaknesses. Oh you! Allah has made hands to work; if they do not find work in what is legitimate, they look for it in that which is illegitimate' Omar explained. He wanted to indicate that the rule does not make the details dispensable. So, whatever rules that the Drafting Committee or any other committee draws up, they won't spare doctors the need for having answers for questions, for they don't have the juristic mentality that enables them to apply a general rule to specific cases.

Dr. Essam Al-Sherbini

Mr. Chairman, it is evident that the symposium topics are all interesting, and discussion prolongs, while some sessions are intermingled. So I request of the jurists and fellow participants that we make utmost advantage of the presence of jurists among us and of the Chairman's well known adroitness in trying to steer debate so that it concentrates, in the present session, on points that cause doctors to be in extremely critical positions, rather than controversy between Law and Sharia. Doctors, in this, are of three types and this also applies to other people:

Type One :

I'll follow the Sharia, and what shall be shall be, and since I'm not subject to any law that regulates my life, I likewise, won't let the law regulate matters that concern my life both in this world and in the Hereafter

- And this, I think, is not the topic of this symposium.

Type Two :

I'll obey law for the sake of myself and my family and in order to avoid punishment and as to Sharia its Lord will take care of it! - This, I think, is also not the topic of our present symposium.

Type Three :

Whose problem is one on which I want discussion to be concentrated. This is a poor doctor, such as myself who wants to be God-fearing and follow the prescripts of religion, then is faced by matters that are in contravention of such prescripts which pose a dilemma for him. The question is: when does Sharia make permissible for me to overlook, under pressure of Law or for fear of harm, some parts of it in obedience to conventional law, and when does it order me to stop and be punished for failure to do so?

This is not a theoretical question at all. I'll cite an example from outside the Arab area, bearing in mind that we here are concerned with problems of Muslim doctors everywhere. Some Islamic countries have issued decrees to the effect that any female with two children is sterilized when she comes to hospital. This did happen in some countries! If I, as a Muslim doctor, were in such a country which of those laws would be permissible to obey in order to avoid harm that would befall me and which would be impermissible?

This is the critical point which I'd like Mr. Chairman and participants to focus on in their discussions.

Sheikh Abdulrahman Abdulkhaleq

I'd like to join Dr. Abdullah Basalmah and Dr. Essam concerning listing those definite cases inquired about, reaching an agreement on them and giving each of them a brief juristic opinion and that this task is not to be left to the Drafting Committee, for if it was not done in this general session, the Drafting Committee might not be able to reach anything on this topic. And our brothers the doctors may later benefit, if jurists opinions were given on those ten or more questions, by comparing emerging issues to them, and perhaps these would also serve as a precedent to be used as reference by the ad hoc committee earlier proposed by Sheikh Badr in case it is voted for.

With respect to the question raised about the attitude of the doctor when the law differs with Sharia, I'd like to say that the general rule on which no one should disagree, is that the Muslim doctor is primarily a Muslim and then he is a doctor; namely he practices medicine within the framework of his religion which is Islam, therefore, he undoubtedly must obey Allah, highly exalted and glorified be He, and this is what will salvage him before Allah, and no created being should be obeyed in defiance of the Creator. Yet the problem is how this contradiction can be pinpointed and how to determine which of them is in the right, and whether there is actually a contravention (in opting for following either side) or not. Therefore, listing such issues and giving Sharia's opinions on them will serve as a guidance for the doctor in that it will determine whether a given Sharia opinion is in conflict with law or not.

With reference to whether pregnancy is to be used as proof for committing fornication or not, this is undoubtedly an issue that is almost agreed upon for the letter sent by Omar, to Abu-Mussa Al-Ash'ari, and which is deemed the first document in judicature, after the Book and Sunna, indicated that stoning was rightfully applied to whoever enjoyed freedom and valid marriage if four witnesses were brought forth, there was pregnancy or in case of confession. Therefore pregnancy is undoubtedly not only a presumption but an evidence, as far as the unmarried is concerned, that a certain vile act has taken place whether by raping or (wilful) fornication.

The opinion that the doctor sins by failing to report pregnancy of the unmarried is not correct, and yet concealment on his part may be an encouragement for commitment of yet another crime. If this unmarried is, say, a girl, she may perpetrate another crime, namely abortion or, if he conceals her affair, relatives may be encouraged to kill her and thus a double crime is committed; killing of the girl and of foetus. So I maintain that deeming a Muslim doctor sinful for not reporting pregnancy of the unmarried is unacceptable if concealment will result in another crime. Those were three issues I wanted to comment on.

Dr. Tawfiq Al-Tamimi

I want to touch on some cases brought forward by Dr. Salah Al-Ateeqi. I think a Muslim doctor should follow Sharia rules regardless of what is stated in the conventional law. If there is conflict, he is to follow Sharia irrespective of law unless he is forced to do the opposite and

threatened with certain harm. In this case he is to protect himself against harm.

The first examples mentioned by Dr. Al-Ateeqi is often experienced by us. Many ladies want to have themselves examined by female doctors. Sometimes a female doctor is present, yet she is not allowed to examine the patient for teaching or training reasons. Securing a sufficient number of female doctors is a duty of the state to spare Muslim women the embarrassment of being examined by male doctors. And as whether the doctor has the right to carry out an operation on an adult female patient despite her personal objection, and the refusal was not only on the part of her husband, for, being of full age she is entitled to decide whether to accept or reject operation. The doctor has not right to intervene surgically or otherwise, because the right of the doctor to intervene, in fact, comes from Allah's right to human body which in turn is the trust of the guardian or the ruler and the ruler entrusts the doctor with it. So, the doctor has no right to treat adult people forcibly but just advise them and does not deprive the objecting female patient of his care. We often see that when a patient refuses treatment, the doctor forces him to sign that he has rejected treatment then gets him out of hospital. This is a very grave mistake. What he should do is to try by means of advice and persuasion either through relatives, friends or whoever is trusted by him to accept treatment. He shouldn't just abandon the issue and evade responsibility.

With regard to the question of abortion, Allah, undoubtedly wants Muslims to be strong, and the Nation to be strong.

Accordingly when hereditary diseases are discovered, prevention and protection would, then, be more advisable. If there is a pregnancy and the embryo is known to be deformed or has a hereditary disease before completing four months, namely before animation, I think that Allah, may forgive us our concern over ridding the nation from weak and deformed Muslim. But when deformity or disease is discovered after animation has taken place, then it is the ordinance of Allah, and there is undoubtedly an extremely considerable rationale behind presence of the sick and the deformed among us from which we learn a lot - through observation, and praise be to Allah for the health we enjoy.

With respect to the question on the child who suffers from hydrocephalus, I think the father is right. And he is so if treatment is futile and I deem his decision correct for I learned that Abu Bakr Al-Siddiq, may Allah be pleased with him, refused to be treated on his final illness. If cure

is doubtful, anyone is entitled to reject treatment either personally or through father or guardian, and no-one else has the right to interfere in this matter. The same rule applies to the child suffering from kidney failure and whose parents refuse to have hemodialysis performed for her. The person concerned, and not any other one, is entitled to decide on this matter for it is a right vouchsafed him by Allah. But if the doctor sees that her future prospect is good and that the probability of cure is good, he should advise that she is treated and repeat advice but not coerce the guardian of the child or an adult patient into accepting something he doesn't want.

Chairman

Thank you Dr. Tawfiq. Doctors, I see, have started to assume the role of muftis, now the doctors.

Dr. Yehia Nasser Khawaji

When Sharia conflicts with law, Sharia must be given precedence because Allah ordained us to appeal to it when we dispute. He, glorified be He, says:

> *OBEY ALLAH AND OBEY THE MESSENGER AND OWNERS OF AUTHORITY FROM AMONGST YOU, THEN IF YOU DISPUTE IN AUGHT REFER IT TO ALLAH AND THE MESSENGER.*

If the holder of authority disagrees with us and orders that law is applied whilst it is in contravention of the commands of Allah and His Messenger, then it is necessary to disobey him and refer to the Book and Sunna; whether his order is based on an opinion given by a mufti or doctor.

With respect to the second point, i.e. abortion, Ulama's opinion have differed as regards the time when abortion is permissible: after four months or 42 days. Learned people maintain that the fetus is animated when it is four months old. Before this the occurrence of animation is doubtful. Animation, therefore, takes place according to the Hadiths related in this connection, after four months of pregnancy, and not after 42 days as it is maintained by some. Some Imams are reportedly of the opinion that the fundamental rule is that animation does not possibly happen before four months from gestation. And as to determination of whether animation has taken place or not, it is just a matter of interpretative judgement based on estimated date of commencement of conception. Therefore, determination of starting date of conception in the case of a mentally retarded female is a problem for no-one can know that

date. Consequently abortion, in this case, may be risky for the four months might have lapsed. So, I think such a female should be examined by doctors in order to make sure whether pregnancy has exceeded four months so that it is not aborted if that is the case.

Sheikh Muhammad Mokhtar Al-Salami

Most of what we have heard on today's topic is generalization; the fact which makes choice of things I'd like to touch on a bit difficult. Most laws in Islamic countries, according to what I know, are laws existing side by side with the Sharia.

It is not right at all to say that something contradicts the Sharia just on account of an interest seen by some. With respect to issues of Islamic medicine - or those of medicine and medical legislation, nothing that represents a real conflict between provisions of the Sharia and medical practices has, so far, been shown to us. And I don't think or I haven't known that a doctor, in any Islamic country, has been compelled to make a difficult choice between requirements of his religion and those pertaining to his livelihood and secular life. Therefore such alleged issues I think, must be thoroughly examined and outlined in order to determine whether there is any conflict or not.

No jurist can maintain that blocking up of reproduction canals for sterilization is categorically prohibited - It may more propably be prohibited in his opinion, but we can't say that it is definitely prohibited and certainly in conflict with the Sharia.

Among the opinions brought forward were some which maintained that the doctor is deemed sinful if he does not report an illicit pregnancy case and which saw it necessary that he reports such a case for fear of probable adverse consequences. I don't think it is necessary for a person, who is aware that someone has, beyond any doubt, perpetrated the act of fornication, to report it, rather he must conceal it, for the probable consequences of concealment are always deemed negligible by the Sharia in all prescripts for it we busied ourselves with following such consequences, even if they were highly probable, legal consequences will get so mixed up for us that we won't be able to know the judgement of Allah on many cases.

There is yet another issue that has to be explained, namely: is treatment with medicines obligatory or not?

We know that Imam Al-Ghazali, may Allah be pleased with him, was of the opinion that treatment is not obligatory for man and that it is better for him to bear illness patiently. Many jurists fall in with this opinion and see that the doctor is never sinful if a believer refuses to accept treatment or to take medicine. The patient is also not obliged to go to the doctor, neither is the latter, after conducting due examination, explaining nature of illness and prescribing necessary medicine, bound to force him to accept treatment, for cure is not undoubtedly guaranteed immediately after doctor's prescription is given. According to this fact, as far as I recall, jurists stated that it is not necessary for the doctor to treat the patient, neither is the latter obliged to follow treatment. He has the choice to opt for either, being excessively reliant on destiny or acting upon cause and effect. Both alternatives were adopted by pious Muslims both in the past and in the present.

Dr. Al-Mahdi Ibn Aboud

Just a moment to show a opinion about the method of work in this committee. In view of the complicated nature and variety of the subjects under discussion I propose, hoping that Allah, highly exalted and glorified be He, will guide us to the path that which He sees good. As regards method of work, agreement is reached on the best way for work, which is nowadays known as scientific method, the way of thinking or spirit which is the very method of Munificent Qur'an in respect of matters such as reasons for revelation and the manner in which verses of the Qur'an were sent down as one whole onto the Master of all Messengers, then later followed by detailed verses tailored to relevant events, thus setting the example of the best way to follow in education and pedagogy, which is to conduct experimental test followed by grouping of results of tests then lastly deducing rules.

If we started with general cases as it happened yesterday and today, discussion will prolong and will lead us away from concentrating on the issues faced by the doctor who is constantly under pressure represented in inquiries of patients and relatives and their demands for prompt answers. These cases can actually be gathered.

Our brother Dr. Hassan Hathout has taken the initiative by calling for submitting these urgent cases to discussion before discussing general ones. Cases can be gathered and categorized either by means of personal conviction or through agreement of a panel of Ulama upon those cases which are clear and have no evident secret involved, since request

made by patient or by family is: what's my illness or my son's and what will happen to him? Cases here are clear-cut and there is nothing wrong with them in that they do not require intervention on the part of doctors or of jurists and they are in the interest of the patient as well as the doctor, except in those which need discretion on the part of the doctor himself; if disclosure of a disease by the party concerned will result in psycological or social complications the doctor had better not to be hasty especially, as we earlier indicated, if diagnosis is so difficult. All medical people are of the opinion that diagnosis, and not treatment, is the most intricate element; if it is correct, treatment, when available, will be easy; if it is not, it will be, even if treatment is available, secondary. This is about treatment which is not relevant to our topic.

There are yet the individual cases. For instance, every week we receive telephone calls or are visited by patients inquiring whether they should fast or not and expressing anxiety over having previously experienced, say, angina pectoris and that they have tried fasting and found it useful and inquiring whether there is anything wrong with that. Here the matter is the patient's concern and not the doctor's for if the latter opposes him, he will be subject to a psychological crisis which, in turn, will lead to the so-called psychosomatic results such as rising of blood pressure, fidgetting, dropping of hair indigestion future ulceration and other reported cases of physiopsychology.

There are also general cases which are specified in laws and legislations either for the sake of statistics, which is something in the interest of both individuals and the public, or in order to provide protection for the nation in advance.

This is also an obvious thing. What remains is the doctor's personal discretion at all times; this is dependent, as Dr. Hassan Hathout kindly indicated, on good morals on top of which is mercy which precedes the wrath of Allah. Besides, improved method of work is the best way to save time. If doctors have an recorded cases the Recommendations Committee may make use out of them by grouping and classifying them then answers, in collaboration with jurists, can be given those which are clear and in the interest of the public. Private interest comes after that. And the doctor is the one who gives the final say in urgent cases.

I personally have made an agreement with one of the Ministry of Waqf in Rabat to the effect that whenever a case, provided it is not urgent, necessitates the jurist opinion I will report it to him then call back the

patient to discuss his case with me and the Ulama of the Ministry of Waqf. I have indeed found them ready to cooperate.

Lastly there is a little joke to tell. I have heard that it is necessary or useful to have a standing committee. The joke is that a book in French entitled "Those Patients Who Govern Us" has lately been issued. A Canadian, Mao Tse Tong and others were among them. The two authors predict the hazards that will befall the nation if a clown were elected for authority.

This is comparable to that. A standing committee can be constituted in this blessed building to follow up cases and deduce rules in accordance with teachings of our upright religion and may the peace and mercy of Allah be upon you.

Chairman Dr. Hussain Al-Jazaeri

Thank you Dr. Mahdi Ibn Aboud, execution of this proposal, I believe, is already underway, the fact which will be, if Allah so wishes. of a considerable effect in facilitating work. Five minutes have remained and some brothers have requested the floor, some perhaps for the second time. Their request will be fulfilled if it is possible.

Dr. Hussain Abduldayem

Mr. Chairman I, first of all, congratulate you on this fruitful session, useful debate and great results. I'd like to say that there is an obvious difference, in this session, in opinions as regards concealment of confidentiality of profession or conduct of the doctor in general. Some of us on the one hand are asked to follow the letter of Law and to report crimes that have already taken place, and some others are asked to report sinful acts that have not yet happened in order to avoid crimes that may ensure. On the other hand some regard everything that is known by doctor a secret and consequently the fundamental rule is that it is kept concealed and should not be revealed except on certain conditions that must be regulated by law, and that the patient should, sometimes, permit disclosure of secret. In short there is evidently a big difference.

With respect to the second stage of debate, namely the conflict between Sharia and Law or between law and Sharia, it is clear that we all are in need of sound Islamic education in order to appeal to the intellect or to the Sharia when asked to do so. It is obvious that there is a difference between a doctor who works in an Islamic country and one who practices

in a non-Islamic country. If you are in an Islamic country, there is, so far, no conflict or discrepancy, as his Eminence the mufti stated, between conventional laws and the Sharia. But if you are in a non-Islamic country, you should seek the opinion within yourself or consult the learned people and Sunna men or just keep away from suspicion. For example, there is no need to conduct abortion in general. I have practiced medicine in the United States, and despite the fact that abortion is permissible there by Law, yet many doctors, both Muslim and Christian refrain from performing it out of religious consciousness.

There is yet another point on which we always lean when we generalizes namely public or family interest or interest of part of the society. It is clear that the governor, the codifier or the law-maker has to determine the cases or conditions which serve the interest of the nation, family or part of the society.

There is a final and grave point, namely the question: If some see that the law contradicts Sharia, then is the doctor the one who has to judge between the law and the Sharia? I think that what is agreed upon is that those who are versed are the ones who must decide on whether the law is in contradiction with Sharia or not. so long as they have not yet issued an opinion that says this law contradicts Sharia, we in our Islamic countries, are bound to apply everything that is a law in all matters such as reporting certain diseases and other cases. This is what I wanted to explain for the point of conflict between Law and Sharia may lead to grave consequences especially when some of us give themselves the right to separate between law and Sharia or ruler on the one hand or between religion and Sharia on the other, and thank you.

Chairman Dr. Hussain Al-Jazaeri

Thank you...there are also, some factual and definite questions which clearly show that there is a conflict between Sharia and Law... Not exactly between Sharia and Law, but about what should the law be, for the manner of application is wrong. There is, for instance, an inquiry, which I received, that says: If the doctor is asked not to state certain medical notes which, if recorded, will serve an interest of his patient and if dropped out will ruin this interest, or if the doctor is asked to change or formulate his report in a manner that contradicts truth, what will this act mean? The answer is that such an act, in the first place, is in violation of law as well as of Sharia. But if the doctor is forced to do such an act, this I believe will be a matter that can happen to everyone, whether a doctor or not. This is

equal to coercion to committing an act of forgery in anything such as issuing an order to manipulate an election as the speaker in the general presentation, his Eminence Sheikh Muhammad Al-Ghazali, stated yesterday. I think that what applies to the doctor in this case also applies to anyone else for this is a violation of Law, Sharia and custom. Yet, a person may be compelled to carry out such an act some time or another. I don't think that I can determine the limits of forcibility within which commitment of such an act is deemed excusable, or not deemed so, to violate the Sharia.

Dr. Muhammad Sulaiman Al-Ashqar

I fall in with the opinion of Sheikh Al-Salami as regards the conflict between Sharia and Law in that if this difference is categorical and the Sharia evidence is also so, Sharia, undoubtedly, should be followed. This is a clear thing to every Muslim. A person is not considered a real Muslim if he doesn't accept this solution for in this case he will be acting in contravention of Sharia just to comply with a law that contradicts it. Points of conflict are few, praise be to Allah for that, for there are very few things that are prohibited, such as murder, drinking alcohol and indecent things that are forbidden to be done in public places. A Muslim, whether a doctor or not, should follow Sharia in all these things. With regard to matters that rely on independent judgement, they, as long as opinions differ about them, undoubtedly need some kind of investigation. Yet, such matters, if opinions are almost categorical in that there are clear and non controversial Hadiths about them, can also be put in one class with the preceding group, and be followed. And as to matters upon legal rulings of which the opinions of the Four Imams concurred or which are deemed more acceptable by the Ulama, they also are joined to the two foregoing groups, for differences, pertaining to them, can be ignored if they depend on doubtful Hadiths or unacceptable reasoning. With regard to positive laws and difference or concurrence between them and Sharia, this is a different issue.

As a matter of fact makers of these conventional laws mostly haven't cared about whether they conflict with Sharia or not. They have tailored them to laws that reached them from other countries. The makers were people who don't believe in Allah or in His Messenger so, if Sharia men expect them to conform to or conflict with Sharia, this, in fact, will be a bit of negligence on their part. They would also be negligent if they waited until a problem occurs then began to search for a solution in the Sharia. The

makers of these laws haven't, in the first place, checked whether they conform to or conflict with Sharia. Anything in it that conflicts with Sharia must be declared even if the Sharia judgement is not categorically known. As to the questions presented before us now.. I mean the ten questions given out, I, think it is waste of time to discuss them one by one, in order to give each the relevant opinion will be a waste of time; rather, we should discuss them on the basis that they serve a general principle, and I think the task of the symposium should be drawing up general rules and then basing specific matters on them. But looking into subsidiary cases is just a waste of time. I'd like to touch on some questions, though there are people here who are more qualified than me to doing so. I hope the Chairman of the opinion ad hoc committee here will give consent to a proposal that nine or ten Ulama, co-operate with the doctors, and this has already happened many times, the specific issues can be submitted to the ad hoc committee if the chairman who is present here now, agrees.

With respect to the question of husband or father who refused that his wife or daughter be treated, as one of the brothers said, the husband is not the guardian of the wife if she is of legal age. If she is not so her legal administrator is the one entitled to be responsible. So the husband has no right to prevent the doctor from treating her if she consents. But when she doesn't give her consent, then it is not permissible to treat a person in spite of him or her refusing. Yet, the problem is when she is unconscious and husband and guardians object to treatment. And as to the case of the minor girl, which was cited by Dr. Salah Al-Ateeqi in the final part of his paper. The guardian of this minor who refuses that she is treated, should be deprived of guardianship for he has misused it. The alternative guardian in this case will be owner of authority, be he a judge, minister of health or deputy. The undersecretary of the Ministery of Health did well when he behaved in the manner stated in the story of Dr. Al-Ateeqi. We have an example in the Sharia for transfer of guardianship, that is represented in the case of the one who unfairly debars a woman from marriage, that is when guardian of a woman, whose consent is necessary for conclusion of her contract of marriage, unjustifiably refuses to give such permission just to spite her or her would-be husband. Guardianship is then, transferred to the next person entitled, then to the one after him, according to opinion of some jurists, or to the judge, according to the opinion of others. Anyway, guardianship is removed when a guardian misuses it with the intention of harming the one who is under his custody. This, therefore, should be done because he, indeed, is not worthy, in this case, of guardianship.

The controversy that took place between Sheikh Abdulrahman and Sheikh Omar over the question of pregnancy is, in fact, a matter of terms, because questioning of the woman is a must. The owner of authority has no right to just stone her without first questioning or asking her to explain her case. If she claims to have an excuse that can serve as a doubt which invalidates application of prescribed punishment, or to have been forced to commit fornication or raped or any other excuse, the prescribed provision is then inapplicable to her as consensusly agreed upon. With respect to the question of treatment (with medicine) and whether it is obligatory or not, it is undoubtedly not obligatory in certain cases for everyone of us, as Sheikh Youssef Al-Qaradawi said, has many illnesses but hides them and lives with them becasue they may be mild and unnagging. But if disease is certainly curable when treated, the first rule, in this case, is rejected by the Ulama who have maintained that the second rule, namely obligation of treatment, must be adopted in this case. If a person has a cut, for instance, and knows that once he bandages the cut he is not going to die and that the cut will heal; he must bind up the wound, and if he doesn't do so, this is tantamount to committing suicide. But if illness is a skin disease or so which may be curable or incurable, he, then to have it treated is not obligatory.

There remains the fact that many diseases which formerly were not curable are now almost certainly curable, thanks to new developments and techniques in the medical field. This is comparable to the question of bandaging a bleeding wound in order to prevent life seep out of the body along with gushing blood.

Chairman Dr. Hussain Al-Jazaeri

In fact time for prayers is up or almost so. Yet I call upon Sheikh Al-Tantawi to give us a short overview.

Dr. Muhammad Sayed Al-Tantawi

I have a word of admiration to what Dr. Al-Mahdi Ibn Aboud said, it is, in my view, that so far as this world of nature exists, man's issues will not cease to exist. Yet, solution of such issues is possible insofar as there is sincere co-operation between science and religion. And I think the best gift that can be presented by this symposium is that various inquiries that are relevant to medicine and Sharia are gathered together then answers in writing are given by the Ulama. And muftis in the Arab and Islamic Worlds

are ready to receive such written questions, meticulously examine them and give answers we deem appropriate, within few days.

After that these answers can be submitted to another symposium, and discussed all over again and any additions can be made for science never stops bringing forth new things, and each case has different means of treatment and a different nature.

Chairman Dr. Hussain Al-Jazaeri

Thanks to you all.

His Eminence Sheikh Badr

In fact I have a short comment on what Dr. Samerra'i said - when presenting some questions he said that he, or any other doctor, was conscience - smitten when he performed an operation and it was a failure. Dont't be sorry for this my son! For if the doctor does the duty imposed by his profession and is not negligent, he is then not responsible for the result. He is responsible only for being careful about taking necessary preparatory measures. So, I once again want to assure him that if he does his duty as a doctor and in accordance with the rules of the profession, he is not to blame even if operation resulted in loss of the eye or even life itself.

He also says that in some cases condition of the diseased eye is so bad that treatment is useless and eye is lost. Here he should not entertain any compunction I assure him that he is not to blame once he has done his duty..and Allah knows best.

Chairman Dr. Hussain Al-Jazaeri

Thank you.. Let's go to prayers.. Session is adjourned.

SECOND: FIQH AND LAW PAPERS



ATTITUDE OF THE DOCTOR AND THE MEDICAL ADMINISTRATOR WHEN CONVENTIONAL LAW CONFLICTS WITH THE ISLAMIC SHARIA

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Introduction

1. The Fundamental Rule is that Law Should Not Conflict With The Islamic Sharia:

If Allah had willed the Islamic Civilization to move in the correct course ever since the inception of Islam to our present time, we would not have been in need to discuss what we are now discussing; i.e. (when conventional law conflicts with the Islamic Sharia), and the Sharia would have been the law that govern all our sacred and secular affairs. Yet, it is the inexorable Rule of Allah in the Universe since the beginning of creation and until the Hour is established. This Rule is represented in the Verse:

> *IF YE SUCCOUR ALLAH, HE SHALL SUCCOUR YOU AND SHALL MAKE FIRM YOUR FEET.*

When Muslims had gone astray off the upright path of the Sharia, Allah abandoned succouring them, and colonialists captured and subjugated their numerous countries from the far east to the far west, except for one single country, namely kingdom of Saudi Arabia. Allah has preserved her from occupation to safeguard His Holy House and the Mosque of His Messenger, may the blessings and peace of Allah be upon him.

Many people believe that occupation of Islamic countries is the sole cause for substitution of conventional laws for the Sharia. But the fact, which is historically proven is that the Ottoman Caliphate, with its vast domain that embraced all Middle East Countries, was responsible for

substituting French laws for Sharia since 1840 to imitate the civilized European Countries. Egypt, which was legislation-wise independent followed suit in 1875 by the mixed laws, then national laws in 1883(1).

It is also historically proven that European colonialists substituted their laws for Sharia in three Islamic countries.

The English colonialists imposed the English Law in India since occupation in the eighteenth century. They also imposed it in Sudan since 1899. The Italians did the same with their law in Libya since 1911(2). Nevertheless all colonized Islamic countries retained provisions of the Sharia in one of the branches of the Law, namely personal statute, colonizers never tried to ignore Sharia provisions prescribed by Qur'an in cases of personal statutes as it lamentably happened in some Muslim countries after independence! We are now amidst a real Islamic Legislative awakening. Some Islamic Countries have passed codes of full Islamic Laws in all branches of Law. The Arab Republic of Yemen and Sudan are examples to cite in this connection. Some other countries have amended some of their laws to conform to the Sharia, as it happened in Libya, Kuwait and Jordan. Some others have started to draw up Islamic draft laws, as it is now the case in Egypt and in the states of the Arab Gulf cooperation council.

And may Allah grant success to Islamic jurisprudence academies in Egypt. Saudi Arabia and Jordan to fully cooperate in making Islamic draft laws in all branches of law so that they can be a ready model for Islamic countries, especially that many of them do not have the scientific means necessary to prepare such draft laws.

And then we, by assistance vouchsafed by Allah, will achieve the dear goal of bringing Islamic countries back onto the upright path of the Sharia which once led them to the pinnacle of glory at a time when the rest of the world, with all its ancient civilizations was shrouded in ignorance and backwardness.

This does not mean that I think the Islamic countries should separate themselves from scientific and civilization progress in the rest of the world around them - Rather the religion urges them to adopt all modern scientific and civilization means in order to catch up with the galloping procession after they have lagged behind for long centuries, especially that the whole world has become a small patch of land after this amazing leap in science, inventions and communications and transport means to the extent that the Earth has become so crowded for twentieth century man, the fact which

led him to invade the space and reach the moon. By the grace of Allah that has been endowed to us, some Muslim and Arab Scientists have had a humble hand in this scientific achievement, the fact which proves that we, on the individual level, are able to reach such great achievements, and that if means available to other countries were likewise available to us, we would be able to contribute, like them, achieving the results they have achieved.

It was natural, after Islamic countries had substituted foreign conventional laws for the Sharia, that some provisions differ with, even contradict each other in many points. Despite the fact that all modern conventional laws, all over the world, have been based on ancient laws such as the Roman Law, and that these Laws, in the beginning, had been purely religious and tailored to capitalize on people's religious sentiments, as it was the case with pharaonic or Greek Laws, or originally religious such as Jewish and Christian Laws, use of Christian religion, in the Middle Ages in systems of government and laws was inductive to revolting against religion, clergy and kings, the fact which led the French Revolution in 1789 to adopt the principle of : separation of religion from the state. This principle has been applied at least apparently, in all Western Countries. Laws of these Countries, in most provisions, have been void of religious influence. Islamic countries have copied these laws, or just translated them literally as the case was in Egypt in 1883 with codes of national laws. Civil Law has made "usury" permissible under the term (interest). And only some forms of adultery were incriminated.

2. Forms of Difference Between Law and Islamic Sharia

If we enumerate cases in which conventional Law differs, in the aggregate, with the Sharia, we will find out that they are few. They may be restricted in the Civil Law and economics to the question of usury in terms of the Munificent Qur'an, or of interest in terms of civil law and economics. Forms of usury, however, are numerous. With respect to criminal law, the conventional law plainly contradicts the Sharia, and not just differs with it, in respect of doctrinal provisions of the Sharia on murder, larceny, brigandage (hirabba) and drinking of alcohol.

The paucity of such cases might have been the cause that induced some people, most of whom, lamentably are legal men, to state, and even shout out, in the press that our laws do not differ with the Islamic Sharia.

Some of them made this categorical judgement without exception, but

some others bashfully add and phrase: "except in few cases". Had those colleagues thought the matter over they would have found out, as we did, that those few cases affect the religious and moral values to the very core. And if it can be said that the question of usury, in some of its forms, is possibly debatable and that some transactions are prohibitable due to it whereas some others are permissible, how, then, is it possible to conceive the mere idea that only some forms of adultery are prohibited whereas the rest are permissible as the case is in conventional criminal laws!

And moreover, is there anything more deplorable, even ridiculous, than finding that Article 273 of the Egyptian Penal Code begins with the statement : "An adulteress may not be tried except upon action thereof filed by her husband. If husband commits adultery at the house where he resides with wife, as it is set forth in Article 277, his action against her shall not be heard"?!! The law, thus does not satisfy itself with tacit permission of all forms of adultery, except for rape (Articles 267-269), but also renders unpunishable the crime of adultery committed by the wife if the husband commits the same. The only stipulation is "if husband commits adultery at the house where he resides with wife".

This is an unhead of stipulation. What is more; it is a religious and human tragedy to deem a crime forgivable if a similar one is perpetrated.

Whereas prescribed provisions of the Sharia, though too severe, were made to deter from and discourage committing of crime, conventional law makes unpunishable crimes of adultery in case a similar crime is committed and takes away Allah's right in establishment of prescribed provisions to put it in a cuckold(4) husband's hands, thus extinguishing fire with what further flares it up. Is application of the Hadith of the Messenger of Allah, may the blessings and peace of Allah be upon him, :

"No penalty on suspicion"

not enough to mitigate severity of prescribed provisions, if not rending them more theoretical, in most cases, than applicable? And is that not enough to satisfy wailers and bemoaners over humanity threatened by "severity and brutality" of Islamic punishments at a time when mankind has plummeted down, in sexual relationships, onto a level unsavoured even by animals, thanks to application of conventional penal codes which incriminate only few forms of adultery and sodomy! while making permissible most of them? Some laws have gone so far as to permit marriage of a man to a man! and homosexuals have, established societies, associations and clubs to advocate their rights!!.

What concerns us in this brief research, which is one of the subjects of Islamic vision for some medical practices, is points of difference between positive law and the Sharia particularly in the medical field.

Before the latest leap in science and technology through the last thirty years during which mankind has been able to attain more achievements than ever, the difference between conventional law and the Sharia, in the medical field, was restricted to a certain number of cases such as abortion and the so-called euthanasia, both of which are impermissible, in anyway, in the Sharia, as well as in some other cases, which are controversial among jurists of the Sharia, such as treatment with alcoholic drinks and narcotics and contraception and birth planning.

But now we are swimming in a coastless sea of modern medical problems which are encountered by Islamic medicine(5), such as artificial insemination, test tube children and the ensuing problems that are not only medical but also legal and social, organ transplant and the resultant issues regarding taking them from the body after brain death and before death of cells and division of death into three types, and like milk banks and selling of mother's milk and the impermissiblity of that in Islamic jurisprudence, according to the more acceptable opinion, and its premissibility according to the less acceptable opinion.

3. The General Rule in The Sharia: "No creature is to be obeyed in something prohibited by the Creator".

The Requirment of this rule is that the doctor and any responsible Muslim are bound by the Sharia not to act in contravention of the established Sharia provisions. Rulers, including judges(6) and the ruled are alike as far as this is concerned. Yet, the Egyptian Supreme Constitutional Court has set a doctrine to the effect that text of Article Two of the Permanent Constitution(7) shall be addressed to the legislator and not to the judge. This principle may be accepted by conventional law, though I doubt it, but it is in no way approved by the Sharia, for the words of the law-maker, who is the highly exalted Allah, is directed to all legally capable people including rulers, judges and every legally capable Muslim.

The role of a Muslim doctor in the medical field is definite and known. But the official may be a doctor or not. A pharmacist is deemed an official in medical matters, so is everyone who undertakes a job that is related to such matters, whatsoever, its kind is, as nursing and laboratories and the like.

4. Resuscitative Measures and Determination of Death Moment.

With respect to euthanasia, the legal ruling in the Sharia, which kept unchanged until invention of resuscitive methods and intensive care, was that it was on no account permissible. It was made equal to intentional homicide. Yet after the introduction of such methods which were conducive to life prolongation of fatally diseased patients, determination of the death moment has become imperative. This began in America in 1950 due to disputes among inheritors. Then success of Dr. Christian Bernard in 1976 in removing a heart and transplanting it in another patient came to add a new problem that necessitated determination of the death moment; for success of this kind of operation requires removal of heart after brain death and prior to stoppage of circulatory functions.

The American judiciary used to apply the criterion of stoppage of blood circulation till 1952 when the criterion of brain death was applied in a case of a patient whose heart had still been beating for it kept sending blood out of the nose. Hence the principle has been "Brain death means the person is dead even if body is still alive"(8).

American Legal men maintain that there is no definite and certain moment for death. Rather, there is gradation from clinical death to brain death then to biological death and on to cellular death. Clinical death takes place when respiration and blood circulation stop, and unless resuscitation methods are speedily used, brain death will follow clinical death, which in most cases will immediately be followed first by cells death within a period of time ranging from three to six minutes, and when all brain functions die, biological or permanent death takes place. After biological and brain death, cell death starts in various organs of the body within different periods of time. Heart and kidneys, for instance, remain alive for short periods of time; and thus they can be removed within these periods and used in operations of organ transplant(9).

It is possible, in this case, to say that between the beginning of clinical death period and during brain death period and biological death period to cell death, we are in front of the "Alive-dead(10)" so to speak and if our brothers the doctors allow us to say so. The point, first and foremost, is theirs to decide, and we are waiting for a decision. It is also possible to say that after the judgment in the Sharia on the so-called "mercy killing", which is absolute prohibition, has kept unchanged, the matter, now that the resuscitation methods have been introduced, requires thorough consideration" so as to determine the death moment, and which of the death

criteria should we adopt, on account of serious consequences resulting from this in respect of Sharia, Law and medicine. Sharia-wise, the moment of death determines number of legal inheritors for instance, and legally this moment determines termination of authorization to attonrneyship by the deceased person and end of his right to pension and enforceability of laws and judgements that have been issued to death. As to the medical aspect it determines when it is permissible to remove some of his organs for transplantation in another body.

Objectivity of research and scientific honesty require me to state, quoting American legal references, that in 1957 Pope Pius XII made permissible removal of the respirator from patients who are in irreversible coma.

This is the same thing concluded by some of our Sharia jurists in the present time.

5. Organ Transplant.

The question of removal of organs from an alive or dead person's body and permissibility or impermissibility of such an act from the standpoint of Sharia have often been studied in juristic academies and Fatwa offices in some Islamic Countries. As to the legal aspect, the state of Kuwait, as far as I know, has issued Law No. 7 of 1983 which regulates kidney transplants.

We hope that the state issue a general law that embraces other transplantable organs such as the heart, lung, cornea and other organs deemed transplantable by doctors.

We have already stated that transplantation of these organs is useless unless they are removed within the period of time between brain death and biological death. This can be done in the case of normal death without use of resuscitation methods. Yet, chance is bigger when such methods are used since the body is kept alive as long as apparatuses are connected to it. Removal of such organs raises two main questions for the doctor:

First : How to obtain the removable organ?

Second : At which stages of death is the organ removable?

Obtainment of removable organs can be effected in one of the following ways:

i. When a person who is of full age, donates an organ of his to another person or two whoever is in need, provided that such an act does not endanger his own life.

   Judgement on this case is clear, and the doctor can perform it by removing the organ from donor and transplant it in patient(13).

ii. When a person bequeathes in a will an organ of his. Judgement on this case is similar to that of the previous one(14).

iii. If the deceased person's family permits removal of an organ from his body. This case also takes the same judgement of the two previous cases in respect of removal and transplantation.

iv. With respect to cadaver of unknown persons either due to non-identification or because the deceased's relatives are untraceable, the public interest, which is represented in saving a patient's life makes permissible for the doctor in charge to remove and transplant organs in this cases (16).

   It is obvious that no doubt is raised as to permissibility of removal of an organ when, as it is shown in the first case, this is done during the lifetime of donor. In the other three cases, the doctor is charge finds himself confronted by the controversial question of determination of death moment in the manner earlier stated (17).

6. The Kuwaiti Law of Kidney Transplants

The Kuwaiti Legislator has issued Law No. 7 of 1983 that regulates kidney transplants. It consists of Seven Articles the first of which states that "Kidney transplants shall not be performed for the six except for the purpose of realizing a likely treatment benefit, provided that such is necessary to preserve patients' lives and the said transplants are executed in accordance with conditions and procedures set forth in this Law.

The Second Article defines the sole source for obtainment of kidneys as "Kidneys that are donated by owners during their lifetimes or bequeathed to be taken following death".

The National Assembly deleted the clause of obtainment of "Kidneys of persons who die in accidents". This is probably attributable to problems which are caused by this method when "approval for removal of kidney is sought from nearest kin", as the deleted text stipulated organs to be

transplanted requires, as I earlier stated that they are removed within a limited and short period of time except in cases where resuscitation methods are used. So attempt to obtain permission of a relative may take time during which cell death takes place and consequently the organ intended to be transplanted will become useless.

The Third Article of the Law sets forth two conditions for permissibility of removal of kidneys; they are "declaration in writing by donor or testator" and that he is not less than eighteen Gregorian years of age. Legal age in the Kuwaiti Law is twenty one full Gregorian years according to the text of the Second Clause of Article 76 of the Civil Law, though full age in the Sharia is connected with pubescence. The most likely opinion is that it is fifteen.

The Fourth Article of the Law states that "Kidney transplantation procedures shall be executed in medical centres assigned by the Ministry of Public Health for this purpose and in accordance with procedures and conditions of which a decree shall be issued by the Minister of Health".

The Fifth Article of the Law specifies punishment prescribed for violation of the Law. It reads: "Without prejudge to any severer punishment provided for in any other law, any violator of the provisions of the present law and executives decisions thereof shall be punished by imprisonment for a period not exceeding three years and a fine not exceeding three thousand Kuwaiti dinars or either of the two punishments".

The Law, it seems, is restricted to kidney transplants owing to the fact that such operations have become familiar in our countries. Nevertheless, the fact is that many transplants of other organs such as cornea and skin graft are being performed in Arab Countries. We hope that the Kuwaiti legislator will issue a general law for organ transplantation, especially that the jurist opinion No. 132/79 on which the jurist opinion No. 87/81 upon which law No. 7 of 1983 was issued, was based, generally specified "permissibility of removal of organs from either a dead or a living person(19)".

Conclusion

The doctor, as any other Muslim, is legally bound to provisions of the Sharia. And if provisions of conventional law differ with those of the Sharia, the Muslim doctor should follow the provisions of the Sharia as much as he can. The field of medical profession and freedom of the doctor within it, in

fact, allows, him to abide by the provisions of the Sharia with more ease and flexibility than in other professions as the case is with legal men and economists, for instance, who are forced by conventional law to violate provisions of Sharia in the field of criminal law and in dealing with usury. There are no conventional laws, in medical field that differ with provisions of the Sharia. A law that permits abortion, for example, has never been issued in any Islamic Country. No conventional laws have been issued concerning the modern medical issues which were induced by the amazing achievements in modern medicine such as artificial insemination, test-tube babies and organ transplantation, except for the Kuwaiti Law that regulates kidney transplants. Therefore, this question is left to the doctor's conscience and piety. Islamic jurisprudence academies in Egypt, Saudi Arabia, Kuwait and Jordan have done their duties in giving opinions on some of these questions.

Yet, we hope that they co-operate more and start drawing up draft law governing these issues in accordance with the provision of the Sharia so that they can be available for legislators in Islamic countries, especially that artificial inseminations and test-tube babies have begun to spread in Islamic countries, and Allah knows how they are carried out, though the Sharia does not make permissible except only one, out of their diverse form! i.e. in which insemination is effected between - husband and wife. Can we be sure that all doctors who practice such operations know this fact?

Therefore, issuance of laws that regulate artificial insemination, test tube babies and organ transplant, has become an imperative necessity.

Annotations

1. My research entitled:
   How the Islamic World Deviated From Sharia Path and How to Return?
   (Research in the Islamic Sharia and Law, Cairo University Press and University Book 1977 - p.32).

2. Ibid, p. 32 and following pages.

3. Not to mention the fact that the Egyptian Penal Code makes use of a legitimate right a reason for permissibility and a factor that precludes punishment, Article 50 stipulates that "Rulings of the Penal Code shall not be applicable to any act committed in good intention pursuant to a right prescribed by virtue of the Sharia" This is a manifestation of how the Muslim legislator is tugged between the provisions of his Sharia and those of foreign conventional laws which contradict the former.

4. The Messenger of Allah, may the blessings and peace of Allah be upon him, says:

   "A cuckold shall not enter the Gardens"

. a cuckold (Arabic: daiyouth) is a man who approves his wife committing adultery.

5. Ahmad Sharaf Eddeen : "Sharia Judgments on Medical Practices", 1407 A.H. - 1987 A.D. and my research on : Islamic Medicine vis-a-vis Some Modern Medical Problems, presented to Islamic Medicine Dept., King Fahd Centre for Medical Research, King Abdulaziz Universityy, - Jeddah.

6. Some old Islamic Jurisprudence books call a judge "ruler". When Ottoman Laws were made they adopted this appellation (Journal of Judicial Rulings Articles 1758 and beyond).

7. This Article states that "Islam is the religion of the State, Arabic is the official language and rulings of the Islamic Sharia are the main source for legislation.

8. Dr. Francis D. More of Harvard, addressing the criteria stated a dead brain is a dead person; yet the body is still alive". (the following reference).

9. All these are from a report presented to Cairo Conference on World

Law, held from 25 to 30 September, 1983 on : "Voluntary Euthanasia, international prospective - Ann Helm. Esq. U.S.A."

10. My colleague Dr. Ahmad Sharaf Eddeen sees that "Artifical Resuscitation is Prolongation of Death" and proposes that a resolution is issued by a medical panel that "there is no return to life after brain death in the case presented to them, and stopping artificial resuscitation apparatuses must be recommended." (Ibid, p. 166 & 187).

11. Same American reference previously cited.

12. I do not know whether there are other Islamic Countries that have issued such a law.

13. Ahmad Sharaf Eddeen (Reference Previously mentioned p. 194).

14. Opinion No. 639 issued by the Egyptian Opinion Ad Hoc Administration on Shaban 26, 1356 A.H., October 31, 1937 A.D., makes permissible that a person donates his corpse for anatomy teaching as there is a public benefit involved. I think that removal of an organ for transplanting in another body realizes this benefit' ("Islamic Opinions" - Egyptian Fatwa House, Vol. 4, p. 1331).

15. Opinion No. 1069 by the Egyptian Opinion Ad Hoc Administration. It does not permit the use of cadavers of persons who have relatives except with their permission (Same set Vl. 7, p. 25050 - Also see text of Opinion No. 132179 by Opinion Ad Hoc Committee, Ministry of Waqfs and Islamic Affairs, Kuwait - Annotation on Clause 6.

16. Opinion No. 1087 issued by the Egyptian Opinion Ad Hoc Administration permits removal of dead person eyes for the purpose of transplantation in the living ones due to advantages realized from such acts, for "Removal of a dead person's eye in order to graft cornea of a blind person is of more importance than conserving the deceased body. This is permissible in the Sharia. (Same previous set, Vol. 7, p. 2552). Also see Ahmad Sharaf Eddeen: Reference earlier cited.

17. See paragraph 15.

18. The law has been issued upon Opinion No. 87/81 by Opinion Ad Hoc Committee, Ministry of Waqfs and Islamic Affairs.

19. It is beneficial to report the rest of the Opinion here. It says "However

if the person from whom it is removed is dead, removal is then permissible notwithstanding he has so bequeathed or not, for the necessity to save a living person makes permissible something prohibited. The person to whom it was bequeathed has precedence (to use bequeathed organ) over anyone else. Taking from the cadaver of the person who has bequeathed organ or whose family permits such, also takes priority over taking from any other cadaver. In case person from whom organ is removed is alive removal of organs, such as heart or lungs, that leads to death or of parts, such as hands or feet for instance, that handicaps him from performing a duty, is absolutely prohibited whether he permits such or not. As regards removal of a kidney, an eye, a tooth or transfusion some blood, it is permitted conditional on obtainment of permission of the person from whom such is taken".

WHEN THERE IS A CONFLICT BETWEEN SHARIA AND LAW : WHAT IS THE ATTITUDE OF THE DOCTOR AND THE ONE IN CHARGE AND THE MEDICAL ADMINSTRATOR?

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This is the subject stated under "Third" of symposium items. Perhaps the question means the attitude of the Muslim doctor, and perhaps the "medical administrator" means the doctor's superiors administratively and technically.

Is the Assumption Actually true?

The first question that is raised by the present subject is: Is this assumption namely conflict of Sharia with law, in the medical profession, true, at least in some cases, in the State of Kuwait or in Muslim countries in general? For if the case was so, we would be confronted by an existing problem that needs looking for a solution? Then can this assumption be true so that the doctor and other people in charge of the medical profession ask: what to do? should they follow the law and be subject to qualms that they may be sinful before Allah, highly exalted and glorified be He, or should they follow Sharia and, thus, break the law?.

With respect to the conflict of law with Sharia in the doctor's field work, at least, in the State of Kuwait, we very much doubt that such an assumption actually exists. This may come true when reviewing the cases brought forward by Dr. Salah Al-Ateeqi in his paper entitled "When there is a conflict between Sharia and law: What Attitude Shall A Doctor Take?". He stated that, by virtue of position as an official responsible for a health zone where people working in the health field seek him for consultation whenever they are faced with obstacles or if they are baffled by acts of some patients or their guardians, he has gained a considerable amount of

experience, then he mentioned some instances as follows:

1. Some men refuse that a male doctor undertake examination of their women who are in a degree of consanguinity precluding marriage or perform surgical operation for them which may be urgent and cannot be delayed... then he poses two Questions:

First Question:

Does the doctor have the right to carry out operation in spite of husband's objection if the female patient is in danger and no female doctor is available? The answer to this question, both from the standpoints of Sharia and Law, is 'yes'. Moreover, it is not only the doctor's right but also his duty which if not done, the doctor will be held legally delinquent in law and Sharia-wise sinful.

Second Question:

Does the husband have the right to kill his wife in this way by failing to accept medical assistance from a doctor? The answer of this question is included in the first question and answer; the husband has no right, neither in the law nor in the Sharia.

2. The second case is one in which some husbands and wives ask for abortion due to innate hereditary diseases, such as Thalassaemia, hereditary blood diseases and German measles, that afflict their children. Then he asks what to do, if parents insist on abortion when pregnancy is past animation of embryo.

The judgement of Law on this case, is the doctor is forbidden to abort pregnancy except for the purpose of saving mother's life. Notwithstanding such, abortion is permitted, provided pregnancy has not completed four months, in the following two cases:

A. If continuation of pregnancy severely harms mother.

B. If it is proven that embryo will be born with a serious and incurable physical deformity or mental disorder provided that both spouses give approval for abortion.

Abortion shall be performed, except in urgent cases, in a government hospital and upon a resolution issued by a medical committee constituted of three specialists one of whom, at least, is specialized in gynaecology and obstetrics. And a decree shall be issued by the Minister of Public

Health specifying conditions that must be available in members of the said medical committee and measures to be taken for the purpose of performing such operation".

This ruling, as I believe, is not in conflict with the Sharia : Therefore, if both parents, or either of them, ask for abortion in cases other than those enumerated in the Law, the doctor must refuse to perform it.

3. A child suffers from hydrocephalus. Father refuses that operation is done within the first days of birth and prefers to let him die than to have a son who may have some sort of deformity. The question is: Does father have a right to kill his son in this way, and what is the attitude of Sharia and Law? Answer: Either in Law or Sharia, consent of father is of no consequence and the doctor must perform operation.

A six year old girl has kidney malfunction and calcification and is in need of constant hemodialysis. Her father refuses this treatment on account of not being able to take her every three days to hospital for the hemodialysis. The doctor tries to convince him that they are ready to take her to hospital but he still refuses this treatment making an excuse that a son of his has died during a similar operation and threatens to hold them responsible if they take her to Mubarak Hospital for this purpose. The undersecretary of the Ministry ordered that the girl should be taken to hospital taking full responsibility despite refusal of father. The question is: Is there anyone who can protect the doctor against consequences, and what is the attitude of Sharia? Answer is: First, the attitude of the undersecretary is correct both in law and Sharia. The penal code text earlier referred to by a doctor is unequivocal in that there is no need for obtainment of any consent if medical or surgical work must be done immediately. There was yet another question: "What should the doctor's attitude be if surgical intervention poses hazards such as, for instance, in the case of the earlier stated girl? The answer here is dependent on a technical and medical question; if the fundamental rules of medical profession require surgical intervention despite likely risks, operation must be performed despite objection of guardian.

4. During a normal delivery fetal condition has deteriorated and consequently a Caesarean Section is necessary to save it from death. Yet the father refuses to have the operation performed on his wife, thus sacrificing child which had an almost certain chance to live if operation has been made. Does the father have any right to dispose of his son's life with such cruelty, and what is the legal and Sharia attitude? The answer is that

father has no right to act in this way and the attitudes of both Law and the Sharia is that father's will is of no consequence in such a case and operation is to be performed.

If Conflict of Law with Sharia is Hypothetically True:

The mere fact that we have not had a specific case where Law was conflicting with Sharia, at least in the State of Kuwait, does not mean that this presumption is impossible. If it supposedly was true and one is certain that Law conflicts with the Sharia in any given medical case, then the question submitted is : "what are the attitudes of the doctor and the administrator in this case?"

Dr. Salah Al-Ateeqi states in the end of his research paper: "Since we embrace Islam and live in an islamic country whose constitution states in the second article "Religion of the state is Islam and Sharia is a main source for legislation", therefore what God says in His Mighty Book,

> *THEN IF YE DISPUTE IN AUGHT, REFER IT UNTO ALLAH AND THE MESSENGER*

must be followed, for it is the decisive determinant and arbitrator to which we must resort when controversy occurs, and this, in turn, necessitates that we pave the way for the doctor. This cannot be done except if a joint panel of the best Ulama is constituted in order to deduce judgments that cover most of our needs for legislations, so that doctors are not at a loss when faced by new occurrences..".

If he meant by the statement "..therefore what God so mighty and majestic is He, says..must be followed" that the state must endeavor to make Laws in conformity with the Sharia and that the task of the joint panel which he proposes is to give judgements of Sharia that cover needs of medical bodies in preparation for issuing laws in compliance with them, it is a proposal which every sincere Muslim undoubtedly falls with. But this interpretation of Dr. Salah's statement does not answer the question : "What are the attitudes of the doctor and the administrator when Sharia conflicts with law?"

But if Dr. Salah intended to answer the above question and meant by the statement "..therefore what God, so mighty and majestic is He, says...must be followed" that application of the second article of the constitution entails that the doctor (or any other responsible person) should leave the rule of Law, when it differs with Sharia, and apply rule of Sharia and the job of the joint panel he proposes to be constituted from

amongst the best Ulama is to deduce the judgements of Sharia, if this was what he meant, then I disagree with him for, though I share with him the desire to make the Word of Allah have the upper hand and to enforce Sharia, I believe the correct opinion is that application of the second article of the constitution does not entail giving precedence of rule of Sharia over that of Law when the two rules conflict.

In order to answer the question, which is based on the presumption of conflict of law with Sharia, we must make the question two questions the first of which is : what is the attitude of the doctor (or the administrator) toward the state which makes the Law? And the second is: what is his attitude toward Allah, highly exalted and glorified be He? In fact, we are in front of two kinds of relation: and the doctor is a party to both of them; his relation with the state and his relation with his Lord.

First:

With respect to the first question, namely, the attitude of the doctor toward the state. I briefly say that the doctor (or the administrator) should act in accordance with what the Law requires.

The Explanation of this is that the Second Article of the Constitution, after stating that the religion of the state is Islam, and it is a statement that gives rise, from the legal aspect, to controversy over what it entails in respect of practicality, it comes to the next statement, which concerns our subject, "The Sharia is a main source for legislation" and this indicates entailment of the first statement, in the view of makers of the constitution, in the field of legislations issued by the state. The statement "The Sharia is a main source for Legislation", and legislation in the legal jargon is the act of making legal rules by a competent body (and it may be used to refer to the very legal rules made in this way), so that legislation is the main source for the rules, namely the source from which the rules acquire their obligatoriness and thus they entail observation on the part of those addressed by them. There is, however, a question : where from does a conventional law-maker get the rules he makes? The answer for this question is explanation of what is called "material sources", namely those which contribute to forming the material (or content) of rule but not to giving it a binding force. These material sources of conventional laws differ according to rules. The legislator may take from another country's law from Islamic jurisprudence, from what people are accustomed to or he may resort to careful reflection...etc. So when the constitution states that the Sharia is a main source of legislation, this does not mean that Sharia is

the official binding source. Rather, the official source, when the legislator takes the rule from Sharia, is the conventional legislation which gives the rule its binding force.

In the light of this a question is raised : Is the law-maker bound, by virtue of the Second Article of the Constitution, to derive legal rules from Sharia? To answer this question I'd like to indicate that the constitutional text says that Sharia is a main source for legislation, i.e. it is not the only main source for legislation; legislation can be derived from other sources. I will satisfy by reporting here what is stated in the explanatory note of the text, it says "This Article has not been restricted to stating that The religion of the state is Islam" it also states that the Sharia-i.e the Islamic Jurisprudence - is a main source for legislation. By so phrasing the text, the legislator is mainly directed in an Islamic way without barring him from making rules, out of other sources, for matters which the Islamic jurisprudence has not laid down governing rules or it is deemed better to update the relevant rules in conformity with the requirements of the natural development through time. The text, moreover, allows, in some parts, adoption of modern penal codes even in presence of prescribed provisions in the Sharia. All this would not be acceptable if it was said that "The Sharia is the main source for legislation", for such an expression would mean impressibility of deriving rules from other sources in any matter for which Sharia has prescribed a rule, which might put the legislator in an extremely critical position if practical necessities compelled him to think twice before adoption of Sharia jurisprudence's opinion in some matters, particularly in certain matters as systems of companies, insurance, banks, loans, prescribed provisions and the like.

It is also noticed in this connection that the text stated in the Constitution - by specifying that "The Sharia is a main source for legislation" - entrusts the legislator with the responsibility of adopting provisions of the Sharia as far as he can, and in a way that forthrightly and clearly calls for that. Therefore the stated text does not mind full adoption, sooner or later, of provisions of the Sharia in all matters when the legislator sees so".

The previously stated excerpts, it is hoped, are clear in that the letter of the Second Article of the Constitution does not bind the legislator to always take from the Islamic Sharia. Accordingly, if it is supposed that the positive legislator drew up rules that were conflicting with the provisions of the Sharia in the field of medical work for considerations taken by the legislator himself, these rules would be good and not in contravention with

the Constitution, and consequently they would be binding to those they were addressed to, and the doctor or any other people in charge of medical work, as for as their relation with the state is concerned, would be bound to act in accordance with them or else would have themselves liable to penalties prescribed for rules they violated.

Second:

If this assumption is supposedly true, the second question is then raised, which troubles the Muslim doctor's conscience, in respect of relation with his Lord, if he leaves the rule of Sharia and responds to that of Law.

So, to answer the question : "What is the attitude of the Muslim doctor in relation with his Lord?", I indicate that the fundamental rule in Islam is that "a creature is not to be obeyed in a matter that is prohibited by the Creator". But besides this fundamental rule, there is another one that is indisputable recognized, i.e. that "Necessity knows no law". Therefore if obedience of the rule of Law is not necessary for the doctor, he should, if he is keen on doing what pleases Allah, refrain from carrying out the rule of law and act in accordance with Sharia and bear whatsoever penalty that the state prescribes for violation of the law.

But if obedience of law is deemed necessary for the doctor, he, is then, granted a special permission by the rule of Sharia to obey the law in violation of the fundamental rule of the Sharia, and he will not be sinful religion-wise if he does so.

Therefore, the question that should occupy minds of doctors is to know the meaning of "necessity" and when it exists in the various cases with which the doctor, or the administrator, is faced and where he finds himself bound by the state to apply its laws that contradict Sharia.

The occasion does not allow for providing answer for this question especially that the applicable aspect, which concerns the doctor, requires that a specific case, on which both the rules of Sharia and Law and the penalty for violation of the latter, are actually given, a matter which cannot be materialized since we are discussing, as it is earlier stated a hypothetical assumption. Therefore, I will satisfy myself by indicating that the legitimacy of special permission in respect of acting against the fundamental provisions of the Sharia when necessity arises, is found in the Verses of the Munificent Qur'an. Not only in those Verses which have prescribed what is forbidden of dead meat, blood, flesh of the swine and

that over which is invoked the name of other than Allah, and only have made permissible the case of necessity; but also there are other verses which show easiness of the Islamic religion and that it does not mean to make things difficult for the people or harm them. This legitimacy is also enshrined in the Hadiths of the Messenger, may the blessings and peace of Allah be upon him, which indicate facilitation. We also refer to the fact that Muslim jurists' opinions have been at variance as regards explanation of "necessity"; some opinions have been strict and others lenient. Some, even, make "need" tantamount to "necessity" in such matters. (See Dr. Abdulwahab Ibrahim Abu-Sulaiman's research work entitled "Necessity and Need : Effects on Islamic Legislation" - 26th Book, Publications of Centre for Scientific Research & Revivication of Islamic Legacy, Faculty of Sharia and Islamic Studies - Makkah Al-Mukarrama - Um Al Qura University).

The Real Problem Faced by Doctors:

If we leave out the hypothetical assumption concerning conflict of law with Sharia, the real problem in my estimation is the difficulty faced by the doctor, in some cases that are presented to him, in knowing the rule of Law on the one hand and whether this rule concurs or contradicts Sharia on the other. Doctors are excused for that since they have not been instructed during the academic years anything neither about the principles or rules of the law nor about rules of Sharia as regards the kinds of work they practice.

If it is true that anyone who practices a profession, such as the doctor, the pharmacist, the engineer, the accountant, ...etc., should supply himself, before beginning work and through his own means, with a sufficient amount of information about the provisions of law in respect of rights and duties connected with his profession so that he can practice it knowingly, yet graveness of the doctor's work requires, in my opinion, that the state systematically contributes to providing the doctor with necessary information in this connection. I, therefore, propose that doctors are given, during undergraduate years or on starting work, a scientific course on the doctor's rights and obligations in respect of profession. It will be advisable if a simplified leaflet is made available for the doctor as a reference, and it will be preferable, to satisfy the religious conscience of the doctor, that legal information given to the doctor in this connection is combined with explanation of the provisions of the Sharia that pertain to such information.

Addendum

Extent of Doctor's Commitment to Administrative Decisions In Contravention of Law

My attention was attracted by what Dr. Hassan Hathout's research paper stated about sacredness of the confidentiality of profession, in respect of the administrative directives.

He says:

"It is lamentable and annoying that health authorities sometimes issue administrative directives, to employees, both doctors and administrators, which are not based on the text of Law, and, thus, contravene it.."

Since Dr. Hathout has explained the correct judgement on such directives by further adding. "Whether such actions are independently thought out or done pursuant to opinion of authorities in the Ministry of Interior, as it happens with orders that require reporting illegitimate pregnancies to the police, administrative directives do not abrogate legal texts or constitutional rights..", I think it is my duty to briefly refer to the attitude that the doctor should take towards orders that contravene the law.

The general fundamental rule is that the doctor, like any other person who does an act in contravention of Law, is mistaken and consequently is liable. Among the forms of liabilities is the civil liability for harms that result from a wrong action. Article 277/1 of the Civil Law states that "Anyone who, by his wrong action, causes a detriment to another is bound to compensate him/her whether detriment is done directly or indirectly".

The question is "Suppose the doctor is a civil servant, will he be spared the responsibility if he does something in violation of law, that is the wrong action he did was in implementation of an administrative order from his superiors?

Here we find that the Civil law, in view of the special circumstances of the civil servant who did the wrong action in implementation of an order from his superiors, exempts him from the responsibility under certain conditions. Article 237 of the civil law states" "A civil servant shall not be held responsible for the work he did to the detriment of another in case such work is done in implementation of a law or an order from a superior

so long as complying to that order was obligatory, or for acceptable warrants order was deemed obligatory and proved existence of reasonable reasons rendering the work done be deemed legitimate and so long as action was done cautiously and carefully".

From the above text it is clear that there are certain conditions for exemption from responsibility, noteworthy of which is the existence of reasonable justification that made the employee think the action done was legitimate, that is not in contravention of law. If the employee does not prove this. We go back to the general fundamental rule which is assuming that the employee knows that his action is a violation of law, and consequently, should be held responsible for any consequent detriment.

Therefore, the doctor who is an employee, if he has an administrative order that is against law, must refrain from executig it, otherwise, he will have to bear the civil responsibility for detriments inflicted upon others due to his work.



DISCUSSION

ON FIQH PAPERS "WHEN CONVENTIONAL LAW CONFLICTS WITH ISLAMIC SHARIA"



Second Session

Chairman Dr. Abdulsattar Abu Ghudda

We proceed with today's sessions. This second session is for juristic and legal aspects. As you know this subject is so interesting, it needs more study and thorough examination. Yet, I hope that the points already discussed will not be repeated. The speaker, in this subject, is : Dr. Muhammad Abduljawwad Muhammad. He is kindly requested to take the floor. (Research Section P. No. 233). After him Dr. Mansour Moustafa will deliver his research (Research Section P. No. 246). Delivery of Research...

Chairman Dr. Abdulsattar Abu-Ghudda

We now open the door for discussion. In fact here are names already listed; Dr. Hassan Al-Shazli.

Dr. Hassan Al-Shazli

The subject on which I'd like to comment is, in fact, concerning what I've heard about refusal of treatment on the part of the guardian of a person, whether of a son or anyone else. This matter may lead us to discuss the subject of legal administration which is an, exhausted subject in jurisprudence and in the Sharia. It is well known that legal administration is an authority given by Sharia to a certain person either to protect and look after another person or to manage his property, and the like as prescribed by Sharia in this connection.

This legal administration is either special or general : Special administration, that is of a person towards another person, and the general is like that of a ruler and other people in charge.

If we have to start with this subject, namely the subject of legal administration, we should begin first with man's guardianship over his own "self"; Is it absolute guardianship or limited by public interest? Sharia hasn't given man absolute guardianship neither of his self nor of his property. It has given him guardianship limited to realization of public interest.

Therefore, if he wants to inflict harm upon himself, we prevent him. Punishment, in the Sharia, for one who attacks his "self" is even severer than that specified for one who attacks the others,

> *"Whoever purposely throws himself from a mountain and kills himself will be in the (Hell) fire falling down into it and abiding therein perpetually forever".*

But no threat is stated in the Verse

> *AND WHOSOEVER SLAYETH A BELIEVER INTENTIONALLY; HIS MEED IS HELL, AS AN ABIDER THEREIN.*

So, acceptability of man's guardianship of himself is conditional on public interest

> *AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION AND SLAY NOT YOURSELVES; VERILY ALLAH IS UNTO YOU EVER MERCIFUL.*

If he refuses these limits, then he misuses guardianship of his body which he has been granted, and consequently general administration must intervene to prevent this misuse.

The second point is man's guardianship of another person to which Sharia has also made limits and controls. If the guardianship is of foetus, then it should enjoy rights for it is a being that exists and is settled inside the mother. This matter was already decided in the First Conference that was held here in this honourable place.. So, the cases in which embryo is disposed of are controlled and not absolute, except for the purpose of saving mother's life. Guardianship of child, later, is a matter of disciplining, caring for and educating him. This task is divided by Sharia between mother and father. If this guardianship is misused too, the general Administrator intervenes to prevent any infringement on the child's interest and to redress the wrong done to him. After this comes husband's guardianship of wife - then father's guardianship in getting his daughter married and who takes it after. All these are conditional, in the Sharia, on serving both the public interest and the interest of the one under legal administration. If the guardian becomes oppressive or delinquent he is deprived of guardianship which is handed over to someone else.

The Third point is also a relevant application. Some texts, which I wish they were cited, in fact, there are texts which discuss the case of a doctor who witnesses a person suffering from something, and someone else is treating him - we find that Ibn Hazm says : If a boy is hired then he is

inflicted with a gangrenous sore which starts to eat into the flesh of his limbs and he is sure that if he does not cut if off disease will move on to the other parts of body, it is, he says, permissible for him to cut it off and nothing is wrong with that". Then he applied this judgement to other similar cases he reviewed, and which were also reviewed by Ibn Al-Qayim. Allah, glorified be He says:

> *ASSIST EACH OTHER TO VIRTUE AND PIETY AND ASSIST NOT EACH OTHER TO SIN AND TRANSGRESSION.*

The fourth point is the "administration" with which a doctor is entrusted. It is a general administration because he is authorized with caring for and preserving the body. If a doctor disagrees with a person in respect of treating a certain case, the case should be submitted to a competent body, for the doctor's individual judgement, sometimes, may not be flawless, in order that sound decision is taken, or this matter is left for a higher level of authority to make a decision in order to salvage this body whose owner wants to destroy it unrightfully.

The last point is about what Dr. Mansour stated in his research. IN fact he thinks that obligation comes from conventional legislation as conventional legislation derives from the Sharia. So, obligation is added to it and not to Sharia. This is a point. The second point is that he can take rules from sources other than the Sharia so long as Sharia allows him to do so. I have two points to mention here; the first of which is that obligation of Sharia is directly for everybody and doesn't need a mediator. Therefore, I think this part takes us away from our subject. The second point is that some provisions are not reckoned, for Sharia consists of what is prescribed in the Book first, then the Sunna, which provides us with many ways either in letter or by way of showing us what we should follow to take the judgment from Islamic jurisprudence, once by way of analogy, and at times by way of juristic discretion, and, on occasion by means of customary law and sometimes for public interest and so on.. We have many sources which can cover all problems.

Chairman Dr. Abdulsattar Abu Gudda

Thank you for this "lecture" - It is, in fact, noticed that doctors have become jurists and discuss juristic aspects more than medical ones.

Dr. Mokhtar Al-Mahdi

I agree with what Dr. Mansour stated in his research that Sharia

doesn't conflict with the law in many Arab or Muslim countries. What we are faced with in hospitals is difference of custom with law. It is customary to ask patient, when he comes to hospital, to sign a declaration accepting performance of surgical operation. This may be relieving doctor from full or part of the responsibility, yet if he refuses treatment he signs a declaration to that effect despite medical counsel and the patient here, though he signs this declaration, is not held responsible for consequences. It should be clear that the doctor is not an executive; when patient refuses treatment for himself or for one who is under his guardianship the doctor cannot do anything in this case. Here I'd like to mention a story that actually took place and for which I couldn't find a solution. A football player had been injured in a car accident and had his spine broken. He was taken to hospital and after diagnosis treatment began by keeping him in bed in a certain position for some period till the fractured spine healed. One evening, the Chairman of the club he plays for, came to visit him and insisted that the patient be taken from the government hospital to a private one thinking that he would be more cared for there. The patient signed a paper taking responsibility for leaving hospital. After several days I was requested to examine the patient after he had had hemiplegia, of course, as a result of moving him out of hospital. Treatment was useless. The story had become a tragedy. If this patient had stayed in hospital he would not have had hemiplegia and the case would not have ended up with a petty offence. The situation after that worsened with a hundred per cent disability and the petty offence became a felony. What could the doctor have done?

Sheikh Muhammad Mokhtar Al-Salami

I wanted to take the floor to discuss two issues. The first is what was stated that the Islamic jurisprudence Academy gave opinion to the effect that death and removal of resuscitation apparatuses is something possible if the condition of patient is hopeless, such as in the case of panplegia or something like that. This has never happened. Rather, the resolution of Islamic Jurisprudence Academy was as follows: Death takes place when brain death happens and decomposition starts.

If the medulla oblongata begins to decompose, this will be indicative of inevitable death. This is by way of scrutinizing reports about the Islamic Jurisprudence Academy.

The second matter, which is a bit general, which I'd like to talk about is that frequent reference is made to a matter which makes one feel

contented, namely the statement "Islamic legislation is based on interests". This rule is a sweeping generalization. It is true that Islam is based on interest, or as Al-Ezz Ibn Abdulsalam said: "Wheresoever you find interests of the people you'll find the Sharia of Allah". But what is interest. and who defines it. If we examine laws throughout the world we would find things that contradict one another in various countries. These things are made permissible by some where other countries prohibit them. The quest for "interests" is what makes any legislative body choose this thing or that. Interests in Islam are governed by rules and fundamentals which are referred to for defining interests. It is something that preserves religion. Yet prejudice, frailty, public pressure and private pressure have their weight. The term "interests" in Islam is not a loose word, rather it is very strict and precise. Many people have unjustly accused Omar Ibn Al-Khattab, may Allah, glorified be He, be pleased with him, for they have assumed the role of jurists whereas they are not so, and they've written on jurisprudence while they are alien to it and thus have slayed juristic thought. This is exactly when someone who is not a doctor interferes in medical affairs and tries to treat a person and kills him instead. They said that Omar, or anyone else, has no right to dispense with a prescript of Allah. They said that Omar had dispensed with a prescribed provision in the "Year of Famine". God forbid! Omar had never called for dispensation with any of the prescribed provisions of Allah. If he did so he would be, if what they alleged was true - an apostate - when Allah says,

AS FOR THE MAN - THIEF AND THE WOMAN - THIEF, CUT OFF THEIR HANDS. This is in order to safeguard interests. Preservation of religion and of life are in the foremost ranks of interests, then preservation of property comes in the fourth rank. When safeguarding property contradicted with preservation of life Omar gave precedence to the latter. He, may Allah be pleased with him, was a patron of independent judgement and when necessity arose he voiced his individual judgement which was based upon keeping a more important interest, and he did this not according to what ordinary people understand but according to what ordinary people understand but according to what jurists do.

Sheikh Abdulrahman Abdulkhaleq

First I want to comment on an inquiry made by Dr. Abdulrazzaq Al-Samerra'i and to which he has not got an answer. It was about a doctor who made a mistake by injecting a certain kind of drug under a layer of the eye whereas he should put it in another layer; can he be sure that he

hasn't been negligent, and is he deemed sinful for this error? I think that Sheikh Badr's answer to the subject has covered only one aspect, namely the case when the doctor has done his best but in vain. If that was so, Sheikh Badr maintained, he would not be sinful. But the case, in fact, is not the same whenever a doctor treats a patient and results prove to be undesirable. For instance, the case in which the doctor does every conceivable effort and unintentionally makes a mistake; this, in my opinion, is a mistake that can be attributed to hastiness and unmeticulousness on the part of the doctor, so he is liable to some extent. The same rule applies to a doctor who is negligent because he fails to prescribe the suitable treatment at the appropriate time as it is the case when, for instance, he is asleep while on duty and does not want to be interrupted and thus causes death of a patient or infliction of harm on him or if he orders the nurse to administer a drug whereas he means another and this because he has been under influence of drowsiness, or in such other case where mental alertness is necessary for doing something sensitive such as prescribing and administration of medicines.

Another example; a doctor intentionally misbehaves either for a personal reason or pursuant to an administrative directive from his superiors.. Therefore, exonerating the doctor from any consequences caused by this act is not advisable. I hope that it is understood now that exoneration from responsibility is only in the case that was referred to by Sheikh Badr, namely when the doctor exerts his utmost and gets undesirable results, otherwise, the case, I think should, be investigated.

There is yet another issue; many speakers reckoned that there wasn't any law in all Arab countries that was at variance with the Sharia. I think this supposition is not quite accurate; in order to know for sure whether these law contradict Sharia or not we must have reliable statistics of all laws which have so far been issued in these countries. And as to the assumption that they may be laws that differ with Sharia, I think many things that have been reviewed since the start of this symposium were thought to possibly be performed by the doctor. These things, whether they are specified by law or dictated by the doctor's Oath, may contradict Sharia, administrative directives or convention, and not only the law, may conflict with Sharia. What counts is the personal viewpoint of the doctor regarding conformity of a certain matter with Sharia, whether it is attributable to the medical Oath, ethics of the profession, applicable law, administrative directives or convention, for these are things which may be at variance with the Sharia. With respect to attitude of the Muslim doctor

toward the well known rule "No creature is obeyed in a matter prohibited by the Creator", he is ordered by the Sharia to follow the prescripts of religion. Even if the doctor escapes whatsoever punishment specified by administrative and legal rules when he does not obey the orders of Allah, glorified be He, he wouldn't be able to escape sinfulness if he acted contrarily to something he knows is prescribed by the Sharia. Now, how can the Muslim doctor know the rule of Sharia? He can know this simply through asking. He'll not be exonerated from responsibility just because he doesn't know, as the prophet, may the blessings and peace of Allah be upon him, said

> *"Allah damns them! they should have asked, for the cure fo the unknowing is asking"*

So, he must ask. If the answer given is not correct in his opinion, then he should consult his conscience, as the Prophet said

> *"Consult your heart even if you have been given opinions of counsellors".*

The believer's conscience undoubtedly shuns sinful act and follows what should morally and religiously be followed. In short there is no vague thing in this connection

> *AYE! MAN AGAINST HIMSELF SHALL BE AN ENLIGHTENMENT. ALTHOUGH HE MAY PUT FOURTH HIS PLEAS.*

The Muslim doctor is an enlightenment against himself and he is personally accountable before Allah highly exalted and glorified be He.

Dr. Abdullah Basalamah

I'd like to talk briefly about the subject of treatment (with medicine). This morning we heard about whether treatment is necessary or not, and we all have heard or read books by Imam Al-Ghazali who holds the opinion that treatment is not mandatory and disease is better borne patiently. What I'd like to say is that we are now in the twentieth or twenty - First century and medical treatment in most cases, leads to improvement of health and of performance of the individual. If it was not necessary hundreds of years ago, it is, I think necessary now for when the Muslim is treated he is able to perform religious duties better. So encouragement for treatment should be given due consideration, for treatment will most probably lead to improvement.

With respect to the question raised by Dr. Salah, namely about the husband who refuses that his wife be examined by a male doctor. This problem was solved in some previous discussion. If solution is difficult then the matter must be solved upon the rule "Necessity knows no law".

There is yet another point, I mean the requests for abortion. If the family is aware that the fetus will have hereditary disease, it is worth-mentioning that modern medicine can detect such disease at a very early stage by means of taking samples of embryo's cells during its first days or weeks and thus abortion will be permissible if any hereditary disease is detected.

The third subject is the subject of German measles. We, as doctors, know through experience that German measles even if it takes place during early months of pregnancy, it is most probable, or to be exact only 50% probable that it may afflict children during the first month of pregnancy, and 50% it may not. Is this probability high enough to make abortion permissible or not? I leave the matter for the distinguished brothers and thank you.

Dr. Ahmad Al-Qadi

It seems that the topic of the session does not constitute a factual problem for practioners. I don't mean that it is a fictitious problem but it is mainly characterized by concentrating on future difference that may take place between positive law and Sharia - The law makes permissible things that are not permitted by Sharia. But the law, as far as I know, does not force the doctor to do any act in contravention of Sharia. If there are any specific cases to the contrary, doctors must state them so that jurist opinions can be given on them. Most examples given so far do not come under the topic of this session. It is true that they are important matters and require juristic, as well as medical, enlightenment, yet, they don't reflect or represent a relevant problem due to contradiction of law and Sharia. Therefore, I hope that we save time and discuss only specific things that reflect a factual problem that happens to the doctor.

Chairman Dr. Abdulsattar Abu-Ghudda

Thanks. This is, in fact, a reasonable argument, for so far we haven't shown anything that represents a contradiction or contravention or difference between Sharia and Law, of course, in respect of the subject we

are discussing.

Sheikh Ezzuddeen Al-Khateeb Al-Tamimi

I have a quick word to say just to correct what Dr. Muhammad Abdul jawwad stated regarding an opinion issued by Ulama of the Jordanian Juristic Academy. The fact is that the Juristic Academy is not Jordanian but belongs to the Islamic world, if I'm not mistaken it consists of Ulama and jurists from all Arab and Muslim countries. It simply happened that the Academy held the third session lately in Amman. There is only Opinion Ad Hoc Council in Jordan which contain eleven Jordanian Ulama and Jurists. With respect to the Opinion concerning removing of resuscitation apparatus, it stated that: a person is dead in either of two cases the first of which is when heart stops consequently, they made permissible removal of resuscitation apparatus from the patient who is incurably ill and whose life is irrevocable. I'm not in a position to explain the resolution owing to the fact that I'm not a member of the Jedda-based Academy.

The second point is conflict of law with Sharia. The word "Conflict" in my opinion is absolutely un-Islamic. I remember when I was having courses in Sharia judicature, conflict of laws as one of the subjects. In private international law, laws conflict with each other. When we come to Sharia, we say that law does not conflict or oppose Sharia. A Muslim should not say the reverse. I liked the expression of a doctor who said "The law differed with Sharia. Yes, law may differ with the Sharia but does not conflict with it, for the Sharia of Allah is too sublime to be opposed or conflicted with by any law. There are some laws that differ with Sharia, but the general rule that all laws differ with Sharia, is not an acceptable argument as one of the brothers said. The other general rule which maintains that all laws agree with Sharia is also not acceptable. Some of them concur with Sharia and some differ with it. This needs due study in order to determine which is which. The question, as far as doctors are concerned, is not whether laws differ with Sharia. It is, as I said this morning, that definite cases must be brought forward so that it can be known whether there is violation in them or not because the doctor wants to know whether what he does will be right Sharia-wise or make him sinful. So this matter needs specific cases to be discussed.

Dr. Omar Sulaiman Al-Ashqar

I say that laws in our Islamic countries are far away from the Sharia and are by no means Islamic laws. And this apparent concurrence of

Sharia and law is just formal for Sharia has a special structure that has been sent down by Allah, blessed and glorified be He. Conventional laws which were taken from other laws, may concur, if they ever do so with Sharia accidentally. Some laws in Muslim countries are derived from more than 70 laws one of which is Sharia. This difference is only formal and is of no consequence For Allah, blessed and glorified be He, won't be pleased with Muslim the nation unless Sharia is enforced.

The doctor's case is with law, and Sharia is the concern of every Muslim what does a judge do when acting upon the Penal Code? There is no concurrence between Sharia and Law in respect of usury which dominates Muslim countries. In many Muslim countries, it is said, drinking alcohol and fornication are permissible, though some forms of the latter are forbidden. Punishment for them is quite different from that prescribed by the Sharia. If there is any agreement in this, it is only formal. Everyone who makes a law conventionally structured, sometimes eliminates some Sharia rulings for they don't concur with the law, which he makes, and with legal fundamentals upon which he bases the law. The source of Sharia is the Book, we have the Sunna. Consensus and analogy. Whereas conventional laws have numerous sources as Dr. Mansour said which may include the Sharia. Most conventional laws refuse to make Sharia a main source and, rather it is showed at the bottom of their source list. So, existence of the difference is possible and consequently there still is the question; what to do when Sharia differs with law?

I probably don't agree with Dr. Mansour who maintains that a Muslim person, as a civil servant is bound to follow a Law that is imposed upon him as a Muslim is bound to follow the Sharia. The matter is so clear to us as Muslims. We will be asked on the Day of Judgement about application of Sharia of Allah. Dr. Mansour says if the administrative employee has orders, he will be bound to abide by them and disobey anything that is at variance with such directives. I believe that if a man-made law that is contrary to the Law of Allah, is issued to us, we should abide by the Law of Allah, this is something in the conscience of every Muslim, and Allah, will ask us on the Day of Judgement whether we have applied His Law or not. The greatest error and disaster of Muslims is that they don't apply the Sharia of Allah, and abandon it. With regard to subsidiary matters, some of them, as in one of the major cases earlier presented, need permission of the authorities. Some brothers said treatment was not necessary for man. This is true. Yet, have I the right to prevent anyone other than myself from being treated? It was said that if guardian refuses treatment for whoever is

entrusted with, guardianship must be taken from him and another is brought in to stand as guardian. Yet does disease always wait till another guardian comes to decide the question? Cases are, on occasion, urgent. This question must be clarified Sharia-wise. I think, no person has any right to deprive someone else, even a son, of food till death, and he also has no right, in the Sharia, to kill his son or wife. If prevention of treatment is to lead to death, then how can he do such a thing? I don't think this is permitted in the Sharia. Doctors and other people should understand that this is not a right of man because it is a matter of life or death of a person.

Dr. Tawfiq Al-Wa'i

The subject of opposition of law to Sharia is examined in full. When we discuss partial differences of law with the Sharia, i.e. in medical practice. In respect of opposition of Law to Sharia in general, discussing this will be time consuming - Dr. Mansour, and other brothers have talked, also Sheikh Al-Salami who said that if law expressly opposed Sharia the former should be ignored. This is fine then he moved on to the case when there is a harm that may befall the doctor or anyone who disobeys law in order to follow Sharia - Our brothers said that convention should be changed. This is something that should be changed, such symposia may do this. Administrative acts do not, as a matter of fact, change Sharia and do not bind us except when a harm is involved which I am going to discuss right now. If harm is to inflict a person, it must be assessed. My brothers have talked about harm that is assessed. And I think that committees which are to be constituted will assess the amount of harm and discuss it. Yet if it is to subject a person to act forcibly, are there provisions for forcibility? Committees can make analogies and discuss it elaborately and there is no need to labour these points further. The question of treatment has been discussed fully by Sheikh Al-Ashqar. Necessariness of treatment was argued against before treatment proved to be efficacious. This subject has been explained by Sheikh Al-Ashqar and so there is no need to go back to it. As regards the question of guardianship. A woman's guardianship of her self and property and a father's of his son were, in fact, explained by Sheikh Al-Ashqar and there is no need to talk about it all over again. With respect to resuscitation and removal of resuscitation apparatus, symposia have, in fact, been convened for this purpose and discussed it elaborately. But what I'd like to add is that the patient should not be deemed dead before removal of resuscitation methods because otherwise the problem will still be there. If this means that removal of resuscitation apparatuses is permissible so that death takes place then

later declared without there being a period of time between the two actions so that it can be possible to rule that death has occurred and the deceased wife is ruled that she is no more bound to him, or any other similar thing.. while he is still alive deciding death should actually come after death, i.e. after removal of resuscitation methods. I think matters are now clear and there is no need to elaborate. Administrative committees, if Allah so wishes, are going to gather these opinions and closely examine them.

Chairman Dr. Abdulsattar Abu Ghudda

In fact I have a simple comment about resuscitation apparatus for they have been mentioned by Sheikh Ezzuddeen Al-Khateeb then by Sheikh Al-Wa'i. I think that the question of brain death differs from the question of existence of patient in full coma which may be decided by doctors as irreversible but brain death and heart death haven't occurred yet. Is it permissible, in this case, to remove organs from his body? It is not permissible, in my opinion, because this is deemed murder. But as to brain death, this is another story, for if brain death occurs, according to declaration on the part of doctors, it means the end of this person whose life is irrevocable. Thank you. I now give the floor to Dr. Yehia Nasser Khawaji.

Dr. Yehia Nasser Khawaji

I'll discuss transplantation, sale and removal of organs.

Chairman Dr. Abdulsattar Abu-Ghudda

This is in the next session.

Dr. Essam Al-Shirbini

My comment on the subject of whether it is necessary or not to obtain approval in the case of performing a Caesarean Section to save baby's life or of carrying out a surgical operation to save a person's life, is that the existing directives stress necessity of obtainment of approval, though the doctor, in extremely urgent cases is permitted to overlook that. Among the well known methods for assessing something is to look at it from one aspect then from the opposite one. How many a fetus or a person lose their lives as a result of delay of approval? What will the result be if we do the opposite and if we make the law in a way that whenever the doctor deems it necessary to perform an operation to save a life or carry out a

Caesarean Section,he is allowed to act promptly? And how much shall we gain or lose? And how many patients will escape from hospital and or never go there? And how many patients will refuse to be hospitalized lest an operation should be performed on them? This point must be taken into consideration while we discuss legal aspects. It is well known that Sharia and laws keep silent on certain matters for fear that their obligatoriness may be conducive to harm - For example as when the doctor opts for treatment number two for fear that treatment One may be harmful. Law and Sharia also may keep silent, avoid or barely touch on certain matters for the sake of realizing interest. I hope these facts are taken into consideration by my brothers.

Chairman Dr. Abdulsattar Abu Ghudda

Thank you Dr. Essam. This is, in fact, a reasonable argument for we should not bear the doctor more than he can - I'm, in fact, not giving judgement but just my opinion - Sorry if you thought this a judgement - I have a short comment. Dr. Hassan Hathout - Sometimes the doctor's opinion is actually for necessity of an operation, but, still, it is an individual opinion. I mean another doctor may hold a different opinion, which is better in practical application. If the doctor opts for carrying out the operation despite husband's objection, his decision may prove to be precipitated for delivery may take place in natural way.

Therefore, this subject is open to independent judgement. Accordingly I hope that we do not draw hasty conclusions and thus drive doctors into liability. Instead we should leave them to be accountable to their conscience for failure to apply this thing. Now, Dr. Mansour has a remark to make.

Dr. Mansour Moustafa Mansour

I'd like to repeat the same thing I've already said to further explain it for perhaps I've failed to make my point clear or what I said might have been misunderstood. I said that the attitude of the doctor should be determined on the basis of two quite different factors the first of which is the doctor's relation with the state under whose sovereignty he works, and the other is his relation with his Lord. By saying that when the Sharia is chosen as a source from which conventional legislation derives Laws I mean that the obligatoriness attached to it is dependent on the conventional legislator's choice. What proves this is that we all call for application of the Sharia. Well, it has not been applied simply because the

legislator has not adopted it, and only when it is adopted by him, it'll be binding to whoever is addressed by it of the state's subjects. This is the meaning of "obligatoriness" and it's a reply to Dr. Al-Shazli. We have laws which are taken from the Sharia and there are many parts of the Sharia that are not adopted and consequently they are not binding, in the view of the state, to citizens. I say that the Sharia is not binding as far as the individual's relation with the state is subject to penalties prescribed by it. As regards the individual's relation with the Lord, we all admit, and I said this, that no creature is obeyed in a matter that is prohibited by the Creator except in case of necessity where permissibility is the rule, and thank you.

Dr. Hassan Hathout

The Sharia, itself has defined the method with which it should be applied. It is not true that Sharia addressed every Muslim individually. When I see a drunk I am not permitted, in the Sharia, to take him and apply the prescribed provision for drinking alcohol, for Sharia is applied in a legitimate ad systematic way and not randomly or individually. I reckon this is the opinion of Dr. Mansour. Law differs with the Sharia in many things. But I haven't yet known, as far as medical practices are concerned one single case, out of those mentioned, in which Sharia differed with law. Even countries where Islam is not embraced there is an article in their laws which states that the doctor may refrain from a certain action if it is against a religious teaching he professes. In America, for instance, one could say: I'm not going to fight in Vietnam for I'm a member of a sect that prohibits man from killing his fellow man; and such an excuse is actually accepted.

With respect to the question of Dr. Essam Al-Shirbini, I say that the greatest grace of Allah with which man is vouchsafed is, of course, life, for life is the container which holds the rest of man's rights and of graces of Allah bestowed upon him. So, if there is a case in which a life is threatened and the doctor believes that it can be saved if he intervenes, then

> *WHOSOEVER BRINGS LIFE TO ONE, IT SHALL BE AS THOUGH HE HAD BROUGHT LIFE TO ALL MANKIND.*

He should do this even without permission of guardian or of patient himself, for if I see a person standing atop of a high building trying to commit suicide, I'm, then, duty-bound to prevent him from that. And likewise, if I found someone trying to kill himself by rejecting treatment. I should then prevent him from that. However, in cases of long-term illnesses or that with no urgency etc, people are entitled to accept or reject treatment.

With respect to removal of resuscitative apparatuses, the same rule is true, namely if even patient's brain is still alive, useless treatment is not necessary - you hear me. Mr. Chairman, for I disagree with you in this. As regards Dr. Essam Al-Shirbini's question concerning life, If we have to save a life in only a matter of minutes but ordered to obtain approval in advance, we will lose many things. You are an internal medicine doctor and not a gynaecologist, and if you were on the other side of the river you would see, and thank you.

Sheikh Abdulrahman Abdulkhaleq

In fact Dr. Hassan Hathout has covered most of the points I intended to talk about. Yet there is one point I'd like to comment on, namely guardianship. I'm afraid that it was understood from Dr. Al-Shazli's speech that he had advocatedly denied the right to legal administration. I mean it is not permissible to take away a 'person's legal administration of his self, when he views this a basic right that is inalienable insofar as he is of legal age and fully sane

AYE! MAN AGAINST HIMSELF SHALL BE AN ENLIGHTMENT,

and give it to a doctor or someone else except when it is certain that he is going to misuse it, as when we find that, as Dr. Hassan said, he has got a disease that is definitely going to lead him to death then he refuses to be treated. In this case he is comparable to one who commits suicide, and one's legal administration should be held in respect. Man is guardian of himself and he well knows what is in his interest and what is not, and if he is to inflict harm on himself, he'll be an enlightment unto himself before Allah, highly exalted and glorified be He. But when he is in such a state, i.e. he is certainly going to bring about his own destruction and there is no way but to deprive him of such guardianship then, this, is undoubtedly another story.

Chairman Dr. Abdulsattar Abu Ghudda

Please let me read out for you one of the recommendations of the Symposium of Beginning and End of Life:

Fifth : On the basis of this presentation by doctors, jurists' opinion is that a person who reaches a stage of definite death of medulla oblongata is deemed to have departed life and is good for application of legal consequences on death that are comparable, notwithstanding an acknowledged difference, to what is stated in jurisprudence about a wounded

person who has got to a state similar to the movement of the slaughtered. As regards application of the remaining legal consequences on death, present jurists have decided to postpone them in order to determine legal consequences which are to be given sooner and those which are to be given later.

Sixth : Upon what is previously stated, the opinion held is that when death of medulla oblongata is ascertained by means of an ad hoc medical committee report, artificial resuscitative methods may be discontinued. This is a recommendation issued by the Second Symposium held by this blessed center.

There are some questions which will be referred to the Drafting Committee.

With regard to the question that was discussed by two of the jurists concerning unnecessariness of treatment, if their reference, in argument, was the Hadith of the woman who said to the Messenger, may the blessings and peace of Allah be upon him, that when she had an attack of epilepsy her body was uncovered, and upon which she was counselled by the Prophet to bear (her case) patiently, then they are not in the right, for treatment of epilepsy was not available at that time. That is why the Prophet ordered her to be patient. If that was not the proof in the Sharia upon which they based their argument, then what else do they have to support their opinion that treatment is not necessary though there are quite a few Hadiths that expressly command treatment. However this subject will be referred to the Drafting Committee as we already said.

There is yet another question about two cases:

1. A patient who asks to have an operation whereas there is a very little hope for success.

2. A six-month pregnant woman who has cancer : delay (of operation) may harm her and benefits baby and doing it promptly is not going to cure her but will harm foetus. These two cases will also be left for the Drafting Committee.

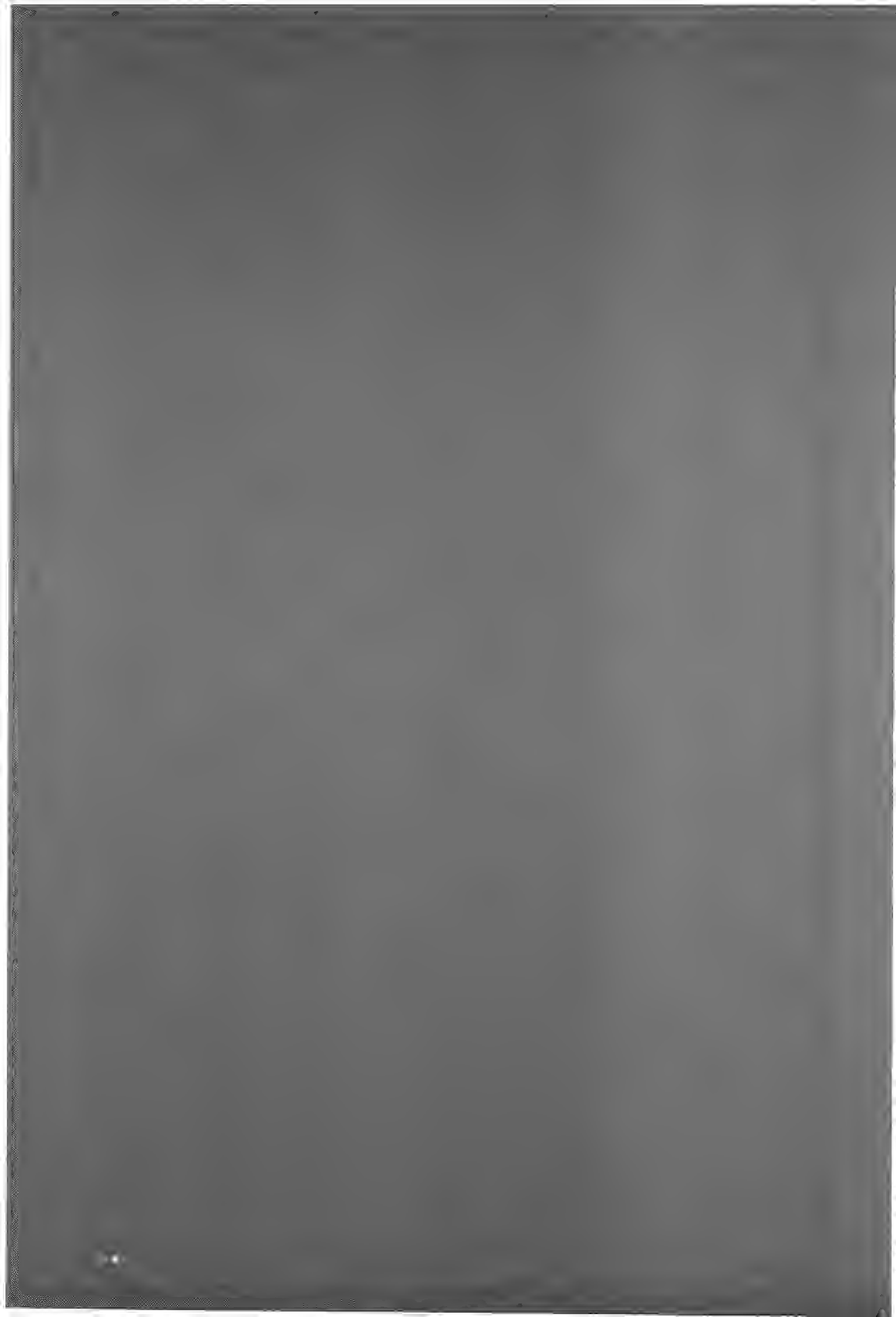
I'd like to relate a simple incident which is a wonder of reality. It is about a person who was sent to Britain for treatment. As a matter of fact I don't know the nature of his disease, but he reached a stage of irreversible coma and he was kept alive only by means of resuscitative methods. Hospital officials contacted the ambassador of the state to which patient belonged for the patient was being treated at that state's expense. They

said that the case was hopeless and expenses therefore were wasted for nothing and that resuscitative methods were better discontinued, but the ambassador refused to heed their argument and said: “we are Muslims and I can’t take a decision to cause death of a person’ - After some period life began to crawl back into the patient until he was well again by permission of Allah. The lesson derived from this is that doctors, on occasion, take a decision, yet there is the Lord above who decides the end and beginning of life.



PART THREE

TRANSPLANTATION AND SALE OF HUMAN ORGANS



MEDICAL AND FIQH PAPERS ON TRANSPLANTATION AND SALE OF ORGANS

DONATION, SALE AND UNBEQUEATHED POSSESSION OF HUMAN ORGANS

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Introduction

In the Islamic World the procurement of living human organs from the recently dead but some of whose vital organs are still functioning has not yet been codified. Heart, liver and pancrease, transplants will therefore remain largely inacessible for Arab patients. The domain of kidney transplant is, however, one of a narrow scope. Kidney procurement, in this case, is made possible through a living donor more often a blood relative with the recipient.

One may, at first glance, raise the following question : Does a kidney donor suffer any harm?. Kidney transplant indisputably implies some hazards during performance of the surgery and the immediate post-surgery period. Although such risks have remarkably shrunk thanks to the staggering advance in modern science and medicine; yet. They still exist.

Moreover, other risks may later appear, if the remaining kidney suffers damage either through accident or disease. That is why divine wisdom has ordained to create excess renal tissue in the human body, in fact more than is normally needed. But if damage to the remaining kidney is a possiblilty, the living donor finds himself faced by a hard choice, between sacrificing a kidney and saving the recipient, especially if the latter is a near relative. The decision is positive if the donor appreciates the profound happiness in giving his relative a chance of life, the happiness of physical and spiritual giving.

Sources of Human Organs Outside And Inside the Islamic World

A world survey of Organ transplants demonstrates that the majority come from donors who have recently died, while donations from blood relatives form a small percentage. Advanced modern techniques have helped improve the success rate, raising rates of success in cases of donors with death of medulla oblongata to approximate rates of success in cases of blood relation living donors, the matter which has urged doctors to reconsider the procurement of human organs from living donors. This is naturally confined to cases of kidney transplant.

The situation is different in the Islamic world. Living donors constitute the great majority in transplant operations. Some countries, like Kuwait, rely at times on imported kidneys. During the First six years of the Transplant Department in Kuwait, 226 kidney transplants were performed : 168 from living donors and 58 from dead donors whose kidneys were imported from the United States. Blood relation living donors represent 99.5% and only 0.5% of the total percentage from friends, which is quite natural as accepting the risk in such cases is more readily undertaken among relatives. Kidneys supplied from abroad used to cost some 5000 Kuwaiti Dinars each, including technique, preservation and transportation. The ultimate aim behind this process is to guarantee the best chances of success in transplant surgeries. However, it seems now that kidney importation has almost or completely ceased.

Does Man Own His Soul Or Body?

It is well known that man is body and soul, and that the soul is in the hands of the Creator only, separation of which from the body is impermissible as this is killing, and Allah has forbidden killing except for a just cause. The impermissibility of committing suicide is stipulated in conventional laws. Penalty is inflicted upon him who attempts to kill himself on the basis that self-murder constitutes a crime against society. Allah has created the human organs and harnessed them for man's benefit, therefore, held him accountable for his organs and will eventually call him to account for wasting away his health.

Consequently, body organs are merely in the custody of man and at his disposal. If we acknowledge that man has the right to donate an organ of his body to a relative, then we approve his possession of that organ. One is not entitled to grant a thing which he does not own. I believe this is quite correct and complies with the Islamic Sharia since one is entitled to

seek indemnity for loss or damage of any organ of his body when suffering an assualt as stated in the Lexicon of Hanbal Jurisprudence that loss of a unique human organ in justification for full Blood Money. In case of loosing two similar organs, the penalty is full Blood Money for both organs and half for losing one, (ENTRY : DIYAH "Blood Money" Question : 49). So long as such Diyah is received by the person harmed who used to benefit from the damaged organ(s) evidences ownership of such organs.

Organ Sale Between Idealism And Realism

The Transplantation of human organs can be tackled from various angles. Our acknowledgement of man's lawful ownership of his organs raises no objection on our part against donation of any organ of his body to a relative who is on the verge of death. We may even look upon this as a noble sacrifice reflecting spiritual values and generous offering. Though scarcely occurring, some potential risks may conduce to the donor's death, he is looked upon as a man dying for the sake of his kinsfolk.

Yet, if giving an organ is conditional on a financial return, and even though we do approve man's ownership of his organs, we are against the principle of his right to dispose of what he owns.

We may try to declare such person legally incompetent, and even incriminate his action. Perhaps this is associated in our minds with the recurrence of slave trade and the repugnant motion that human life can be valued money-wise, that it has a price affordable by the rich and, maybe impossible for the poor.

Some western communities have decisively settled this issue and have actually codified it. In the United States, for instance offering of human organs has been prohibited if coupled with material benefit or benefit in kind. It has been contended, in this regard, that trading in human organs is originally and immoral principle, and that permissibility of such trading is conducive to the emergence of markets for such needed commodities, the appearance of wholesalers and middlemen, in addition to newspaper advertisements for persons willing to sell or purchase human organs. This actually started in an Indian city, and in South America there were advertisments for the sale of kidneys or eyes from living people for a sum of money. Consequently, in 1984, the United States enacted a law providing for a punishment of five-year-imprisonment and/or fifteen thousand US dollars fine for whoever is involved in such acts of sale.

Other countries also started to apply sternness, but on smaller scales by insisting, for instance, on making sure, by all means, of the blood relation between the living donor and the recipient, and that sufficient proof of such relation has been furnished, including testimony of witnesses. In England, it is preferable not to take kidneys from donors without blood relation except in dire necessity and when a kidney of a dead donor or of living relative is not available. In such cases, assurance should be made that there is no extortion nor exploitation, and that the amount of money received by the donor do not exceed the expenses needed to compensate him for the stoppage of earning his living during and after the surgery when he stays at hospital unable to work.

It is worthwhile to comment on the background of such laws in such countries and their compatibility or non-compatibility with the Islamic world as regards the issue of transplantation, rather than automatically following... Here some facts emerge:

First:

The source of recently dead donors due to brain injury provides large numbers of human organs needed for transplants in western countries. Although, such sources cover much of the requirements in West Europe and the United States they don't cover all. Then follow the donors of blood relation. In such a case, there is no dire need for sale and purchase. The patient has only to wait for his turn to have surgery, whether for a short or a long time. On the other hand, the patient in the Islamic world has hardly any chances other than purchase, if affordable, when he finds no proper donor of blood relation, especially after the procurement of organs from recently dead persons outside the Islamic world has almost ceased.

Second:

We have to admit that the motive of a blood relation to accept the risk for the sake of a son or a brother, does not pertain in donors of no blood relation, except in negligible cases.

Third:

It seems that one of the major motives behind prohibiting material benefit in the west, and may be behind stopping supply of kidneys by the United States to outside countries, like Kuwait, in addition to what has been formerly stated, is what some newspapers published that transplant

surgeries have been conducted at growing numbers not only nowadays in governmental and university hospitals, but also in private hospitals in the United States and West Europe. Some US private hospitals declared to foreign patients that "successful transplant surgeries through recently dead donors can be conducted in the shortest time possible if they can afford the large fees, which made rich foreign patients able to outbid the American citizen, who is bypassed and has to wait for his turn to come. In West Europe, private hospitals conduct transplant surgeries for foreign patients who could afford the charges after short periods of waiting, no more than two weeks".

Such information was published in the United States in the Transplant Journal in 1986. The Journal added that in the US in 1984 there were 20,000 American citizens who underwent dialysis awaiting their turn for transplant surgery. In the same year around 600 kidneys were sent outside the country. The authorities in transplant associations feared that donors may refrain from donation after death if such situation prevails. Hence, the former law was enacted. Officials have also stopped sending kidneys outside the country until the needs of American patients are first satisfied.

In such a way, the transplantation Department in Kuwait is threatened to lose an important source of kidney procurement, being the sole source providing kidneys of dead donors. In 1983 the Kuwaiti Transplantation Department obtained from this source 29 kidneys out of a total 70 transplanted kidneys in that year, (41%). Consequently, the number of Kuwaiti patients on the waiting list for surgery has reached 200. Some of them naturally die before their turn comes.

Is Purchase of Human Organs Acceptable?

Although we dislike the notion that human body becomes a salable commodity on the market for those who could afford the price I may imagine none of us in dire need of a kidney for himself or for a family member encountering a dilemma to purchase this kidney, at any price whatsoever, rather than accepting death in observance of the prohibition of trade in human organs and would not purchase it. In this case, he will be motivated by the principle : "Necessity knows no law". It goes without saying that there is no single case of transplant unless for dire necessity. Would such principle be the exception or the general rule for those compelled to purchase kidneys?

On the other hand, if a person wishes to waive a part of his body to a patient with no blood relation against material recomponse, wouldn't this probably incarnate a spiritual valve of a different aspect? This material recompense may, for instance, go for the treatment of a son verging upon death while father cannot afford the charges of treatment. This is a mere example which may serve for analogy.

A lot has been said about blood donation and trade in human blood. Blood is a human fabric, though differing in nature from human organs as being a replenishable fabric. Does the whole issue tackle abundance or scarcity inside the human body, or is it the principle of sale and trade of components of the human body upon which life rests? This dispute has been settled by the establishment of blood banks to collect blood from donors who offer blood as a gift seeking the reward of the Hereafter, and from others who seek material recompense as determined by officials - after taking measures to avoid harm of both donor and recipient, and to avert the repugnant notion of trade in human body. In such a way, matters have been settled and controversy abated.

Opinion For Debate

It is indisputable that freeing donation of human organs from commercial exploitation or profiteering is a unanimous demand. We have to exert our utmost efforts to prevent such extortion. Prevention may not go through prohibiting or incriminating the waiver of human parts if coupled with financial benefit as prohibition may imply sacrifice of liver which could be rescued. Prevention should, however, provide the alternative means which may not compel us to resort to such available channel.

Such alternative means are the procurement of human organs through donation after brain death of unpaired organs or of kidneys after natural death with stop of heart beating, on condition that obtainment of kidney is made in the shortest time possible. In the last case, difficulties may arise since the approval of relatives is a precondition. The major difficulty is psychological. Physicians contact relatives of patient who has just died to talk with them on the removal of his kidneys for transplantation trying to seek approval immediately, at the time when relatives suffer the first shock hardly believing that their patient is actually dead. The majority of relatives disapprove. Information authorities should shoulder their responsibilities in this regard by creating proper awareness in such situations. On the other hand, religious authorities must assume more

important tasks by calling for donation after death in accordance with procedures agreed upon such as registration in a transplant association, a medical society or joint committees to procure human organs after death in due time according to the will of the dead and without referring to relatives so as to avoid difficulties and painful situations. I hold the opinion that calling for donation will be willingly accepted among Muslims as donation brings life to human soul : "and whosoever bringeth life to one it shall be as though he had brought life to all mankind". A dead donor may save two persons and not only one. That would be a "running charity" which benefits the deceased even after death and renders his reward uninterrupted, and may extend to cover cases of human organ donation which breathe life into a living man whose offering of life to himself as well as others never ceases?

Until we attain adequate sufficiency of the former means, we have to regulate the possibilities of kidney waiver against material recompense, on condition that no publicity in this respect is made. In collaboration with the medical societies and in the presence of Health Ministry representatives. The Transplant Association should lay down the rules it deems appropriate, provided that it has to interview those submitting offers in this regard and discuss each case in terms of motives, circumstances and requirements so that the ultimate decision of approval or disapproval of the offer may properly be taken. As far as the material recompense is concerned, the Islamic Sharia has actually determined it as previously mentioned to be half the blood money or wergild equalling 5000 Kuwaiti Dinars. By mere coincidence, it is the very sum of money paid by the Health Ministry to procure a kidney from abroad.

In our previous contention, we have raised a set of questions and proposed solutions to many of them. I hold the opinion that such solutions serve as a necessary introduction to answer one of the two questions raised in the symposium on those sentenced to death : "Is it permissible to take a human organ from one sentenced to death and without necessitating a will to save the life of a patient?"

On the strength of the opinions and questions proposed in these papers, we view that imposing punishment on man deserving death sentence may not extend to his money or human organs unless otherwise stated in his will or following the approval of relatives. This case, anyhow, does not form a valuable source as it has been demonstrated that the average of those receiving death sentence in Kuwait in the last three years does not exceed a case and a half per annum.

JUDGEMENT ON SALE OR DONATION OF HUMAN ORGANS

His Eminence
Prof. Dr. Muhammad Sayed Tantawi
Mufti Of Egypt

1. Divine Honour To Man

When we contemplate the Magnificent Qur'anic verses and Prophetic Traditions, we find that they have held the human race in esteem and highly honoured his essence which contains soul and body.

Some Features of such honouring:

A. Allah, highly exalted be He, has shaped man in the goodliest mould and comeliest form, considering this as a great blessing which deserves gratitude. Allah says, in the opening lines of a Qur'anic verse:

> *BY THE FIG, BY THE OLIVE, BY MOUNT SANAI, BY THE YONDER SECURE CITY, ASSUREDLY WE HAVE CREATED MAN IN THE GOODLIEST MOULD.*

Moulding originally means giving a thing its shape which it should have in terms of adjustment and proportion. Moulding also indicates rendering a thing in the comeliest shape which it should have, i.e. By the fig which is one of the best fruits in shape, taste and usefulness, By the olive which meets people's needs for food and light, By the secure city which is the Honourable Makkah and By Mount Sinai which is the mountain on which Allah, Exalted be He, spoke directly unto Moses.

By all this... We have created man in the goodliest mould and comeliest shape. We have, afterwards, bestowed upon him, and upon no one else, pure eloquence, sedate mentality, profound knowledge, strong volition and great ability to achieve desired aims in life.

Therefore, moulding in the utmost comeliness shape in creating man, perfecting his shape and rending better his form manifests a feature of divine providence which cares for man's body and soul.

Similar to those Quranic verses on the creation of man in the goodliest mould, Allah, Highly exalted be He, says in Surat Al-Infitar:

> *O MAN! WHAT HATH BEGUILED THEE CONCERNING THE LORD, THE BOUNTIFUL, WHO CREATED THEE, THEN MOULDED THEE, THEN PROPORTIONED THEE. IN WHATSOEVER FORM HE LISTED HE CONSTRUCTED THEE.*
>
> *(S82:V6-8)*

The verse means : O man created by the Omnipotent, what deceives you and renders you heedless to obey your Creator, the Mighty, the Majestic, disdaining His commands and prohibitions, though Allah, Exalted be He has created you in the most perfect shape and goodly moulded your parts in a miraculous way to properly perform their functions, proportioned your parts in great harmony with each other and put you in the shape compatible with your structure through His Might and Wisdom.

Creation of man in this comely, well-proportioned and harmonious shape of perfection in form and function is a thing that deserves long contemplation, profound thankfulness and the best of manners. The sequential stages of creating, moulding, proportioning and deciding shape are strikingly apparent evidence of the value of man's shape.

B. Among the features of man's honour in Islam is considering his body absolutely owned by Allah, Exalted be He, since he is the Creator who has moulded and proportioned his parts. It is not permissible for any one whosoever to dispose of human parts of others or even of oneself in a harmful or ruinous way.

Heavenly religions and conventional laws have, therefore, prohibit body harming and self killing through suicide or any other means conducive thereto.

Among other Qur'anic verses, prohibiting self-killing are those in which Allah, exalted be He says:

> *O YE WHO BELIEVE! DEVOUR NOT YOUR SUBSTANCE AMONG YOURSELVES UNLAWFULLY, BUT LET IT BE A TRADING AMONG YOU BY MUTUAL AGREEMENT. AND SLAY NOT YOURSELVES. VERILY ALLAH IS UNTO YOU EVERY MERCIFUL. AND WHOSOEVER DOTH THAT IN TRANSGRESSION, PRESENTLY WE SHALL ROAST HIM IN FIRE, AND WITH ALLAH THAT IS EVERY EASY (1).*
>
> *(S4:V29-30)*

These two verses imply explicit prohibition against man's killing of himself or others as Allah, the Merciful prohibited killing and promised awful doom for those who do this in transgression.

Other Quranic verses also make impermissible that man risks his life without any dire necessity as Allah, says:

> *AND EXPEND IN THE WAY OF ALLAH, AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION, AND DO WELL, VERILY ALLAH LOVETH THE WELL-DOERS (2).*
>
> *(S2:V195)*

Casting of man's self into perdition or any other means conducive thereto includes self-murder and also all ways leading to loss and awful doom, such as cowardice and persistence in the perpetration of abominable deeds.

Holy prophetic traditions which forbid suicide are numerous as related by Al-Bukhari, Muslim and others. Narrator Abu Huraira, said, the Messenger of Allah, said:

> *"Whoever purposely throws himself from a mountain and kills himself will be in the (Hell) Fire falling down into it and abiding therein perpetually for ever: and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the (Hell) Fire wherein he will abide eternally for ever; and whoever kills himself with an iron weapon, will be carrying the weapon in his hand and stabbing his abdomen with it in the (Hell) Fire wherein he will abide eternally forever".*

In Sahih Al-Bukhari, on the authority of Abu-Huraira, the Messenger of Allah, said:

> *"He who commits suicide by throttling shall keep on throttling himself in the Hell Fire (forever) and he who commits suicide by stabbing himself shall keep on stabbing himself in the (Hell) Fire".*

In his Sahih, Ibn Habban also related, on the authority of Jaber Ibn Samurra:

> *"a man was suffering from a troublesome lesion. He took a knife and slew himself. The Prophet refrained from performing the death prayer over him".*

2. Conclusions Derived From These Texts.

From these texts we come to the conclusion that the Sharia of Islam greatly honoured man and commanded to safeguard him against ruin or harm. It prohibited killing or harming man except for a legitimate cause, and explicitly and evidently demonstrated that it is not permissible for man to dispose of his body in a way conducive to ruin, damage or harm. Though each man exercises his will as regards his body, yet his will is restricted by divine limits defined by Allah, and within the purview of the verse:

> *AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION.*

And the verse,

> *AND SLAY NOT YOURSELVES, VERILY ALLAH IS UNTO YOU EVERY MERCIFUL.*

Consequently, "verifiers" have unanimously agreed that man is not permitted to sell any organ of his body whatsoever for many reason. Most important of which are:

First:

Man's body and organs are not subject to sale or purchase, not a commodity for commercial exchange.

Man's body is an edifice built by Allah, honoured and elevated above sale and purchase. Allah has categorically prohibited trading in human organs, the sale of a free man or an organ of his body is lawfully invalid because of his "honour and by virtue of the Qur'anic text

> *AND ASSUREDLY WE HAVE HONOURED THE CHILDREN OF ADAM (4).*

The text of the honourable Hadith related by Imam Al-Bukhari, on the authority of Abu-Huraira, that the Prophet said,:

> *"Allah says, I will be an opponent to three persons on the Day of Judgment : One who makes a covenant in My name, but he proves treacherous, and one who sells a free person (as a slave) and eats the price, and one who employs a labourer and gets the full work done by him, but does not pay him his wages".*

Jurists have unanimously agreed upon the invalidity of sale and/or

purchase of human body or any organ of it whatsoever.

Second:

Man's body is not owned by him, but by his Creator. Man is only a guardian of his body. He is commanded to do what may benefit this trust and by no means harm it.

If man trespasses such limits and acts in a way conflicting with the well being of his body, he then becomes a breacher of confidence, violating the trust given to him by Allah. Man's disposition of his body is "prohibited and considered null and void due to the fact that he improperly disposes of that which he doesn't own, thus evidencing lack of religion, foolishness of mind and absurdity.

Third:

It is not admitted to say that among the lawful rules is the principle that "necessity knows no law" and consequently that man may dispose of his body when there is a necessity.

In answer to this, we say that disposition at necessity is only made within the divine limits permitted by Allah. He says:

BUT WHOSOEVER IS DRIVEN BY NECESSITY NEITHER ALUSTING NOR TRANSGRESSING, FOR HIM IS NO SIN,

that is any one who is driven by dire necessity to eat forbidden food, such as dead animals or pigs, with no lust for it or access to other food, and seeking not such forbidden food in a selfish attitude towards another who is in need, and also while trespassing no limits to only satisfy his anger and sustain his life, then it is no sin for him to eat such forbidden foods:

VERILY, ALLAH IS FORGIVING, MERCIFUL.

In addition, such rule is further restricted by others, such as: "Harm is not elminiated by another harm", which means that it is not permissible to eliminate a harm by causing another harm similar or greater in degree. That is why it was said: it is not permitted for a hungry man, for instance, to take the food of another hungry one like him by stealing or any similar act.

No financial support is imposed on a poor man for his relative of a similar condition of poverty. It is indisputable that sale of a human organs constitutes severe harm to the human body which may be graver than the case when man suffers poverty, distress or need, because such need may

well directly motivate him to lawful means for earning a living, whereas man's loss of a human organ is scarcely compensated.

Among such rules are also the following : "The more harmful detriment is removable by the less harmful one", "when facing two evils choose the less harmful, "Endure private harm to avert public harm", "when comparing between two ill deeds consider which is the greater in harm and do the other", "warding off evils precedes in importance bringing benefits", "What is prohibited to take is also prohibited to offer", "what is impermissible to do is also impermissible to ask for" ...etc., in addition to other relevant juristic rules.

3. Ruling on Donation Of Human Organs

One may raise a question : "Since the sale of a human organ is lawfully invalid and prohibited does the case apply to donation or offering of a human organ to another person in need?

Some scholars do not differentiate between the two cases. They hold the view that both cases are impermissible on the basis that donation of a thing is made through its owner, but the real owner of man's body is Allah, whereas man is only a guardian of his body:

> *AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION.*

Among the Ulama who declared this opinion is Sheikh Muhammad Metwali Al-Shaarawi who said that donation of a thing is a branch of possession in the sense that you donate that which you wholly or partly own, but you do not donate a thing you do not own, and hence, donation becomes lawfully invalid.

Man does not possess himself, whole or part nor his body as it is owned by Allah, the Creator. None can disclaim this fact.

Hence, the punishment for suicide is perpetuity in fire because man in such case kills and ruins a soul's "building" which he does not possess, not to mention deliberately turning to a thing owned by Allah and disposing of it in a way He prohibited. Accordingly, man, who does not possess his self, wholly or partly cannot donate his organs.

Other jurists hold the view that donation of a human organ by a man to another is permissible within certain conditions, most important of which is the following:

A reliable Muslim doctor should state that transfer of a human organ from someone to another may not entail serious detriment to the doctor, and that life of the recipient and recovery from an incurable disease are both contingent upon such transfer. We say it is a precondition that no serious detriment may result from that transfer because any organ in the human body is created by Allah, to serve a specific purpose, and such transfer may cause the loss of benefit which varies in degree from one organ to another.

His Eminence the Grand Imam, Sheikh Gad Al-Haq Ali Gad Al-Haq, Sheikh El-Azhar says: "if an experienced Muslim doctor, or even non-muslim as Imam Malik maintains, authoritatively asserts that cutting the body of a living man with his permission to take an organ, all of it or just part of it, for transference to another body of a living man for treatment purposes will not originally entail serious harm to the donor, as harm should not be eliminated by another harm, and will be of benefit to the recipient, then such transfer is permissible in Sharia, on condition that transfer is not effected by way of sale or against material recompense, because sale of a free man or part of him is invalid in Sharia. His Eminence further adds that "we have deemed donation permissible under the given conditions because the donor exercises a sort of legal administration over his self within the limits of the two munificent verses:

AND SLAY NOT YOURSELVES, AND CAST NOT YOURSELVES WITH YOUR HANDS INTO PERDITION (7).

We feel inclined to holding this opinion, but within the strictest limits and in direct necessity, in implementation of some juristic rules which say choose the less harmful and the more harmful detriment is removable by the less harmful one, and because of the fact that man scarcely donates part of his body unless in the most dire necessity, and that donation scarcely occurs unless for a recipient so dear to the donator. Some scholars are even inclined to the permissibility of paying material recompense in case the non-transfer of an organ to patient entails ruin or serious harm to him and in case no donor of blood-relation is available.

They hold the view that such case is a dire necessity in which the impermissible is made permissible.

Such a rare case does not, however, provide basis for juristic rules, but is subject to estimation of competent people, the experienced doctors. Included under this rule, the prohibition of sale of human organs, is the impermissibility of sale of blood, being invalid Sharia-wise.

Whereas donation of blood is permissible as they say "it is a product but not an organ of man's self since it changes and renews itself and man can compensate for quantities lost.

4. Ruling On Transferring An Organ Of A Deceased Man To Another Living One

In answer to this question we may say that the Sharia of Islam has honoured the body of man, living or dead, and has prohibited its abuse, disfigurement or assault of any kind whatsoever.

Among features of such honouring is the command to wash, shroud and to offer funeral prayers and burial rituals.

It was quite instructive of the Prophet, not to leave any corpse, whether of a muslim or none muslim, on the ground when a battle comes to an end.

In Badr Battle, the Prophet ordered to bury the dead polytheists as well as the Muslim martyrs. He says in the honourable Hadith:

> *"Breaking the bone of the dead is tantamount to breaking the bone of the living"*

which means that penalty against the abuse of a dead body equals that against the abuse of a living one.

That is why some scholars contend that donating any of the human organs whether in life or death is impermissible since man cannot dispose of his body neither in life nor in death, nor can his inheritors nor others, because the only one who could dispose of the body and soul of man is the Creator.

His Eminence Sheikh Al-Shaarawi argues "as far as the permissibility of donating human organs in case of death is concerned, we may say that if donation is prohibited for a man in his life, the very case, with greater reason, also applies in his death, because since man does not own his body in life, his inheritors do not, with greater reason, own his body after death. (8)

Another group of scholars say: It is permissible to transfer a human organ of a deceased man to the body of another living one, on condition that such transfer conduces to a necessary benefit to the recipient for which there is no alternative, and that the case be decided by the competent reliable doctor. It is a necessary procedure to seek permission

from the inheritors. In case there are not inheritors, permission should be taken from the Public Prosecution. Nevertheless, such permission is not binding to competent people, namely reliable doctors if they believe that the life of a living man is contingent upon the transfer of a human organ of a deceased person, on the basis of the famous juristic rule which says: "The most harmful detriment is removable by the less harmful one".

The more harmful detriment is represented here in keeping a living man exposed to a severe illness and expected perdition, whereas the less harmful detriment stands for the procurement of a human organ of a deceased person to treat another living one. This opinion also rests upon what is maintained by the majority of jurists that it is permissible to cut the abdomen of a mother approaching death or parting with life to bring out a living baby or to maintain hopes of life for it, and that it is also permissible to cut the abdomen of a person after death to bring out some money he had swallowed before death.

If we permit such transfer from a living person within necessities and restrictions as aforementioned, along with the presence of harm inflicted upon the living donor, then we should permit, with greater reason, the other mentioned cases relevant to the dead donor where no harm is inflicted upon him due to the transfer.

5. Conclusions

1. The Sharia of Islam honours the body of man, living or dead, and prohibits abuse against it or any organ thereof.

2. Man's sale of any of his organs is lawfully invalid and prohibited. Such sale is only permissible in the rarest cases decided by reliable doctors when they deem a patient's life contingent upon that sale.

3. Man's donation of any of his organs is permissible by all jurists, but under the conditions and necessities already specified.

4. Procurement of an organ of a dead body to save the life of a living one or to cure him from an incurable disease is also permitted within the afore-mentioned limits.

Annotations

1. Surat Al-Nisa' : verses 29 - 30.
2. Surat Al-Baqara : verse 195.
3. Quoted from the Book "Al-Targheeb Wal Traheeb" by Al-Mundheri, vol. 3, p. 300. Eight Hadiths are mentioned in this chapter but we have cited only three.
4. Surat Al-Isra' : verse 70.
5. "Al-Targheeb" by Al Mundheri, vol. 3, p. 33.
6. See "Al-Liwaa Al Islami", sixth year, issue No. 266, on 26.1.1987, Cairo.
7. See "Al-Fatawi Al-Islamia", issued by the Egyptian Mufti Administration, vol. 10, p. 3702.
8. Journal "Al-Liwaa Al-Islami" issue No. 266.

RESPONSIBILITY OF DOCTORS AS VIEWED BY JURISTS

His Eminence
Dr. Muhammad Sayed Tantawi
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1. Responsibilities vary in importance and gravity according to impacts and results. It is indisputable that the responsibility shouldered by doctors is considered the greatest, because they are the guardians of souls and bodies of people, and because people are cured, God willing, from the most incurable and severest diseases through them. Any error or neglect on their part may lead to delay in recovery, or to ruin and death.

2. The medical profession strikes deep roots along thousands of years, as man, at any time and in any place, seeks to be cured of diseases and may sacrifice all his property in pursuit of recovery. Therefore, health is a matchless blessing whose value is not perfectly known except by those who suffer the agonies of disease.

The honourable Hadith says:

"There are two blessings which many people lose: (they are) Health and free time for doing good".

The divine Mercy of Allah, ordained for His subjects that some people exist, at all times and every where, and be successful in knowing the medicine that cures diseases and maladies.

If the miracles worked by Prophets are compatible with the practices in which their folk were skillful, we find that a large portion of the miracles of Jesus Christ, Peace be upon him, pertains to medicine because this profession, at his time, topped the other professions in which his kinsfolk were skillful.

Allah says:

AND CALL TO MIND WHAT TIME ALLAH WILL SAY: O JESUS, SON OF MARY, REMEMBER MY FAVOUR UNTO THEE AND UNTO

THINE MOTHER WHEN I AIDED THEE WITH THE HOLY SPIRIT SO THAT THOU SPAKEST UNTO MANKIND IN THE CRADLE AND IN MATURITY, AND WHEN I TAUGHT THEE THE BOOK AND WISDOM AND THE TORAH AND THE BIBLE, AND WHEN THOU FORMEDST OUT OF CLAY AS THOUGH THE LIKENESS OF A BIRD BY MY COMMAND, AND THOU BREATHEDEST THEREINTO AND IT BECAME A BIRD BY MY COMMAND; AND THOU HEALDEST THE BLIND FROM BIRTH AND THE LEPER BY COMMAND; AND WHEN THOU CAUSEDEST THE DEAD TO COME FORTH BY MY COMMAND..(1)

"The Law" on medicine, a book written by Avicenna, who died in 428 A.H., is considered one of the original medical references in Europe, to the extent that no medical diploma was awarded unless the candidate perfectly knows all theories included in this precious Book, which was translated into various languages.

And may Allah have mercy upon he who said: "The science of medicine entered Europe with an Arab Turban, but came back to us with a hat". Reviewing the Introduction of Ibn Khadldun, one will find good words on the science of medicine, its various domains and methods of treatment, and also on the most famous books on this science (2).

3. The Sharia of Islam ordained treatment of diseases, and mentioned several methods of treatment, among which are the following:

A. To seek the proper medicine through a reliable doctor, well qualified in this profession.

Al Bukhari and Muslim related on the authority of Abu-Huraira, that the Prophet, said:

"No disease Allah created, but that He created its treatment".

In another account

"There is a remedy for every malady, and when the remedy is applied to the disease it is cured with the permission of Allah, the Exalted and Glorious".

B. To take preventive measures against things leading to diseases through quarantine, and keeping away from those carrying contagious diseases.

The two Sheikhs Al-Bukhari and Muslim related - on the authority of Aisha - may Allah be pleased with her, she said:

"Plague was a punishment or torture which Allah sent on the

children of Israel or on some people before you. So if you hear of its spread in a land, don't approach it, and if a plague should appear in a land where you are present, then don't leave that land in order to run away from it (i.e. plague)".

When the companions, disagreed upon entering a region of Mesopotamia where the plague spread, Abdul-Rahman Ibn Auf said: "I have some knowledge about this. I heard the Messenger of Allah, may the blessings and peace of Allah be upon him, say:

"If you hear about it (an outbreak of plague) in a land, do not go to it, but if a plague breaks out in a country where you are staying, do not run away from it".

4. If there are good qualities and noble characteristics which should be observed in dealing with others, the foremost among people who should enjoy such good qualities must be with greater reason doctors.

On top of such qualities are the following:

A. Mercy, tender-heartedness, gentleness and patience. Doctors should stick to such characteristics because they deal with people inflicted with illness which makes them psychologically stressed.

It is indisputable that such patients are the foremost among other people who should receive due care, mercy and leniency, especially from doctors to whom they are entrusted if a doctor loses such qualities, he then loses the most important characteristic in his profession.

B. Among the most important qualities which a doctor should observe is honesty in the broadest sense.

The doctor should guide the patient to that which will benefit him in absolute honesty and precision. He should not divulge patient's secrets unless there is a necessity. He should exert his utmost to make the patient comfortable and lead him to recovery.

5. Jurists specified certain conditions for those who profess the medical practice. They have defined doctors' rights and duties, and cited many examples of penalties against those who act in transgression against this sublime profession.

Among the conditions laid down by jurists for those professing the medical practice is that the doctor should be learned in the profession, specialized in the medical practice, an expert at its details and subtleties.

Ignorant practitioners in medicine must be declared incompetent and prevented from treating people.

It is unequivocally irrefutable that the criterion of knowledge in medicine varies through different ages and along with the advancement of sciences. In some ancient eras, the criterion was the fame attained by the doctor that he perfectly masters the medical practice. Two other doctors, of the same profession, and with profound knowledge in medicine would testify that such a person was eligible to practise the medical profession. The basis for this can be found in the Hadith related by Abu Dawud, Al-Termidhi and Ibn Magah that the Messenger of Allah, may the blessings and peace of Allah be upon him, said:

> *"He who practices medicine and is not therein verse is deemed like a guarantor".*

In the Book, "Ikhbar Al-Ulama bi Akhbar AlHukama", 130, by Imam al Qifti, it was stated that Al-Muqtadir the Abbasid Caliph, ordered his physician Sinan Ibn Thabit Ibn Qurra Al-Harrani to examine the physicians of Baghdad at his time, and to grant those satisfying him in knowledge and practice a licence to practise the branch of medical profession in which he is versed.

The order of Al-Muqtadir, the Abbasi Caliph, was due to a physician's error in treatment that lead to the death of a patient. It is worthy mentioning in this respect that this Caliph ordered his Muhtasib, then like a minister of interior, to consider that matter, so that no one would be permitted to practise medicine, unless licensed by his physician Sinan Ibn Thabit, who died 331, A.H.

In this Book, "Maalim Al Kurba Fi Ahkam Al-Hesbah" by Muhammad Ibn Muhammad Al-Qurashi Al-Shafii', and after a long talk on the control over physicians, surgeons and bone setters the following conclusion on medicine and its requirements was stated:

The physician is the most learned on the physical constitution of human body, disposition of organs, the diseases inflicting them, causes, symptoms and signs and useful medicines, the methods of replacing such in case of non availability, ardent efforts to extract such medicines, means of treatment by prescribing sufficient doses of medicines according to the severity of disease, giving different doses according to quality, so that He who Is Not Aware of Such Matters, May Not Be Permitted To Treat Patients. It Is Not Permissible For Him To Embark Upon Prescribing Any Treatment With Risks Involved In His Endeavour. He Must Not Attempt

That Which He Knows Not.

In the Hadith related by Amro Ibn Shu'ib, from his father, from his grandfather, he said, the Messenger of Allah, may the blessings and peace of Allah be upon him, said:

> *"He who practices medicine and is not known to be such practitioner is deemed like a guarantor".*

Physicians should have a senior chief of the same profession. It was narrated that Greek kings used to install in each city a physician renowned for his wisdom and let him interview and examine the other physicians in the city and give orders to those with imperfect knowledge to work hard and read to gain more knowledge and discontinue practicing medicine. If a physician come to examine a patient, he should ask him about the cause of his illness and also ask him to inform him of renewing pains. The physician should afterwards, prepare a prescription of syrups and other drugs. He should write a copy of the prescription to patient's relatives or witnesses present with him during examination. The next day he comes and considers the illness and the flask (3), and ask the patient : Does pain decline, or not? Then, he prescribes the proper medicine accordingly and writes a copy to be delivered to patient's relatives. The physician should repeat the same process on the third and fourth days... and so on until the patient recovers or dies. If the patient recovers. The physician receives his fees and honorarium, but in case the patient dies, his relatives come to the renowned physician showing him all the copies written by the treating physician. If he deems the prescription compatible with the principles of wisdom and medical practice without the least omission and/or carelessness on the part of the physician, he then says: patient has died because his life terminated, but if he considers the matter otherwise, he advises patient's relatives to take blood money for their dead man from that physician as it was he who killed the patient through improper practice and omission. In such a noble picture they were prudent to the extent that medicine may not be practised unless by those eligible and that, the physician may not neglectfully practise the profession. The Muhtasib should put the physicians under the obligation to take the Oath of Hippocrates, which he made physicians take, i.e. to swear not to give any one a harmful medicine, nor prepare a poison for anyone, nor prescribe for women medicine that causes miscarriage, nor for men and drug which prevents begetting of children, to lower their sights so as not to see that which they should not when they enter the houses of patients, not to divulge secrets, nor unveil that which is covered, nor expose themselves

to disapproval.

The physician, moreover, should possess all medical tools in full. etc. (4).

From this long text, it is clear to us that jurists properly defined the term "physician", and laid down precise conditions for those who wish to profess the medical practice.

They also decided that physicians should have a senior who looks after their affairs and examines those wishing to profess medicine. Moreover, they defined the professional liability for doctors, and penalties imposters who do not belong to the profession.

The Muhtasib should also put the physicians under the obligation of a solemn covenants and Oath to properly perform their functions, and to abide by the sublime ethics dictated by their noble profession when practising medicine.

6. The late Dr. Ahmad Essa in his Book, "History of Lunatic Asylums in Islam", quoted two copies of medical licences awarded to a phlebotomist and the other for a surgeon.

Following is the text of the first licence: this is a copy of what the Reverend Sheikh, Dean of physicians, the guiding light of the intelligent, Sheikh Shihab Eddeen Esaiygh Al-Hanafi, Physician Chief of Egypt, wrote to award the learned youth Muhammad Azzam, one of the apprentices of the Reverend Sheikh Zain Eddeen Abdulmo'ti, Surgeon Chief, the medical licence for memorizing the treatise on phlebotomy. Then he mentioned the licence and the function of licensee, and stated that he was assistant to the Sheikh (Chief) of surgeons in Al-Mansouri Lunatic Asylum...etc. in the book already referred to.

The second licence was issued by the Surgeon in Chief at Al-Mansouri Sanatorium, Sheikh Shams Eddeen Muhammad Al-Qaiyem. In the end it reads: "I asked Allah, the Exalted, for proper guidance and granted the surgeon licence to practise surgery as much as he perfects knowledge of it in order to attain success in surgical operations, phlebotomizing veins, cutting off arteries and extracting bad teeth... etc., dated the good Safar, 1011 A.H., 1602 A.D.

His eminence the late Sheikh Abdulaziz Al-Maraghi commented on both licences saying : considering the two licences, we realize that they were awarded on the basis of either submitting a treatise for discussion which the candidate defends, or commenting on treatises, formerly

submitted by others, which he verifies while providing a definite scientific contribution by way of commentary, as the case is with Ph.D. Theses in our present time. Nicely enough the one who granted the first licence was Ahmad Ibn Siraj Eddeen, styled Shihab Eddeen, known as Ibn Al-Saiygh Al-Hanafi. He was Chief of Hanafitics in Egypt, and their teacher at Al-Barquqiya, though acting also as physician chief. He had only one daughter who assumed the sheikhdom of medicine after his death (5).

7. Jurists have also decided that doctors like other people of other professions, are held accountable for their errors which are avoidable, and which may inflict harm upon the patient.

Jurists stated that if a doctor makes an error in treatment, by prescribing a drug other than that specified by Medicine and known to doctors, as being the adequate drug for a certain disease but it has inflicted harm upon the patient or led to his death, the doctor should, in this case, pay blood money or what the judge may deem as indemnity for the error made.

Al-Shihab Al-Ramli commented on the Book "Sharh Al-Rawd" saying that if the doctor commits an error in treatment and caused detriment, his folk should pay the indemnity.

Imam Al-Shafii in his Book, "Al-Om", vol. 6, p. 166, said what can be summarized as : "If a physician cups a patient, circumcises his boy, or treats his riding-animal and detriment resulted due to his treatment, physician may not pay indemnity if the treatment is similar to that prescribed by other physicians for the good of the patient as known by the learned people of the medical profession, but if the physician purposely treats patient in a way his peers will not do for the good of patient, then he must pay indemnity".

In his book, "Tabserat Al Hukam Fi Usul Al-Akham", Judge Borhan Eddeen Ibrahim Ibn Farhoun Al-Malki commented on the indemnity paid by craftsmen and physicians saying : "If the person who circumcises is not known to be versed in this profession, then he is therefore held accountable and should pay the indemnity, with no liability on the part of his clan i.e. his folk. Moreover, the fair Imam must give him a deterrent punishment by slashing his back or prolonging his imprisonment. The same is applicable to the physician, cupper and veterinarian for what they do and in the same manner of formerly described in the case of the circumciser".

From these juristic texts, it is clear that jurists expounded the lawful punishments against violation by physicians and others in respect of requirements of profession, such as honesty, experience and sound performance.

To sum up what they said: If the violation made against the ethics of the profession is a criminal act, then he should receive the right penalty, otherwise, the Muhtasib may impose disciplinary punishment as this is within his competence. In former times, the Muhtasib enjoyed the competence of any administrative authority or Doctors' Syndicate with the necessary regulations and rules of today.

Islamic Jurisprudence has, thus, organized the medical profession and has also restricted its practice to persons eligible for this humane delicate profession by those who are experts in this, on top of whom is the Physician in Chief.

Suffice it to quote what Abu-Naeem narrated that the Messenger of Allah, may the blessings and peace of Allah be upon him, said:

> *"He who practices medicine and is not qualified and causes harm to a human soul or to a soul lower (than human) he is deemed like a guarantor".*

8. As Jurists have categorically settled the cases in which professionals, first among whom are physicians, can be held accountable for the results ensuing from the mistakes they make, they have also settled the cases which spare them such liability.

To sum up their opinion, we may say: Not to be responsible is contingent upon (having a permission when the work done is usual and routine and does not exceed what is customarily done in similar operations) that is when what is done by the physicians is in conformity with standard practice in such cases. Al-Dur Al-Mokhtar and Commentary thereon states: No indemnity is payable by a cupper, veterinarian or phlebotomist who does not exceed the usual limits..." i.e. who does not do something in violation of what fellow physicians used to do when treating this injury or that disease.

These were only excerpts and examples of the responsibility of doctors as viewed by jurists. We can clearly see how they did not fall short of showing the responsibility, or unequivocally state points of dispute, and even more defining what duties are imposed on doctors and what rights they have.

Annotations

1. Surat Al-Ma'ida/110.
2. See the Introduction of Ibn Khaldun Vol. 3. p. 1441, commentary by Prof. Dr. Ali Abdulwahid Wafi.
3. The "flask" may refer to the tube where there is the patient urine which served for following up development of the disease through its colour, or it may refer to the drug prepared.
4. From a Research Paper on "Responsibility of Physicians" by the late Sheikh Abdulaziz Al-Maraghi - Al-Azhar Journal, vol. 20, 1368 A.H., 1948 A.D., p. 206.
5. Ibid.

DISPOSAL OF HUMAN ORGANS

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1. Allah, highly exalted be He, says in His Mighty Book

AND ASSUREDLY WE HAVE HONOURED THE CHILDREN OF ADAM: AND WE HAVE BORNE THEM ON THE LAND AND THE SEA, AND WE HAVE PROVIDED THEM WITH CLEAN THINGS, AND WE HAVE PREFERRED THEM OVER MANY OF THEM WHOM WE HAVE CREATED WITH A PREFERMENT.

(S17:V70)

The honour given to man is due to the fact that Allah created him by His Hands, thus moulding him in a goodly shape, providing him with hearing and sight, preferring him over all creatures by virtue of reason, knowledge, speech and the ability to create through the faculties man instinctively enjoys, making His Angels prostrate for him, placing all things in the universe at his disposal and making him His viceroy on earth to spread His religion, disseminate His Law and execute His Judgement.

2. Based upon such honouring is the necessity to maintain the existence of such species in a noble clean manner against all things which may harm, weaken, eliminate or kill man except with legitimate justification:-

It is not permissible to murder man as Allah, highly exalted says:

AND SLAY NOT YOURSELVES, VERILY ALLAH IS UNTO YOU EVER MERCIFUL.

(S4:V29)

It is prohibited for man to kill himself and for people to kill each other, to do anything conducive to murder or ruin, to take drugs or use poisons harmful to the body and to run risks in things involving perdition.

Amro Ibn Al-Aas narrated that when he was sent as a commander of the military expedition of Dhatul-Salasil: I had a wet dream at a very cold

night, I felt if I perform major ablution I should die, so I had a dry ablution, then led my companions in the morning (Dawn) prayer. When we came to the Messenger of Allah, may the blessings and peace of Allah be upon him, they told him this. He said:

> *"O Amro, you led your companions in prayer when you were junub (i.e. on a state that makes bathing obligatory). I said, I remember what Allah, Exalted be He, says, "And slay not yourselves, verily Allah is unto you ever Merciful" The Messenger of Allah, smiled and did not say anything".*

The verse, in general, involves sound argument to which Amro Ibn Al-Aas adhered to avoid doing something that would harm him, for more obligatory Sharia-wise is safeguarding life than the obligatory duty of taking a bath.

3. It is impermissible to deliberately kill a believing soul as it is protected by Islam, nor to kill anyone living in Muslim lands, unless otherwise stipulated by the Sharia:

Allah, highly exalted be He, says:

> *AND WHOSOEVER SLAYETH A BELIEVER INTENTIONALLY HIS MEED IS HELL, AS AN ABIDER THEREIN.*
>
> *(S4:V93)*

Allah also says:

> *AND SLAY NOT ANY SOUL WHICH ALLAH HATH FORBIDDEN, SAVE IN JUSTIFICATION.*
>
> *(S25:V68)*

Such killing may be tantamount with infidelity as the Prophet, blessings and peace of Allah be upon him, said in the speech of farwell pilgrimage:

> *"Do not become disbelievers after me by cutting the necks of one another"(1).*

In the Sahih, "narrated Anas Ibn Malik, the Messenger of Allah, said:

> *"the greatest sins are to join partners in worship with Allah, to kill a soul which Allah has forbidden to kill, and to be unkind to one's parents (2)".*

The Law-Maker has only excluded two cases as follows:-

(i) In advertent killing, which necessitates expiation for Allah's sake and blood money for the killed.

(ii) Killing with Justification as in the Hadith by Abdullah Ibn Mas'ud, the Messenger of Allah, may the blessings and peace of Allah be upon him said:

> *"It is not permissible to take the life of a Muslim who bears testimony (to the fact) that there is no God but Allah, and I am the Messenger of Allah, but in one of the three cases: a life for a life, the married adulterer and the deserter of his Islam, abandoning the community(3)".*

4. It is absolutely impermissible to make an aggression against man, even in a lawful fight. Allah, highly exalted be He, says:

> *AND FIGHT IN THE WAY OF ALLAH THOSE WHO FIGHT YOU, AND TRANSGRESS NOT.*
>
> *(S2:V190)*

that is you should fight for the sake of Allah, and should not fall in transgression in fighting with infidels, avoid mangling dead bodies, killing women, children, the aged, or monks, and that you should only fight those who fight you.

In Buraid's Hadith, the Messenger of Allah, used to say:

> *"Fight in the name of Allah, fight against those who disbelieve in Allah, do not embezzle the spoils, do not break your pledge, and do not mutilate (the dead) bodies, do not kill the children nor hermits"(4).*

If this is the guidance of Islam in lawful war, how about such guidance in peace, in Muslim countries and among Muslims?.

The Arabic Linguists say that the omission of the object (in Arabic) in "And transgress not;" indicates the absolute prohibition of transgression which means that you should not transgress upon others, in the sense that transgression is merely a tresspass beyond that which one should be confined to whether in soul, or in other things, exactly as in killing animals, setting fire to trees for no benefit, and whether transgression is small or great.

Transgression is greatest when committed against a Muslim, as well as against a Zimmi (i.e. a free non-Muslim subject living in a Muslim country).

It is impermissible to harm a Muslim in word, deed or look because:

> *"A Muslim is the one who avoids harming Muslims with his tongue or his hands"(5) and, "It is impermissible for a Muslim to look at his brother in a way that offends him(6)" and, "It is impermissible for a Muslim to scare a Muslim"(7).*

In many texts of the Sunna, it is prohibited to harm a Muslim, not to mention taking off organs of his body, and this will be tackled in the present research.

5. It is impermissible to dispose of man who is honoured by Allah by selling him or any organ of his, whether in life or death. Such sale is not to be effected, as it is invalid and should be abrogated. It is, further, inadmissible, and is not subject to rules of prescription. It is not binding by money paid nor conditions made. Such sale does not also generate any of the rules ensuing from a sound contract, as Al-Kassani maintains.(8).

Narrated Abu-Huraira, the Prophet, said:

> *"Allah, highly exalted be He, says: "I will be an opponent to three person on the Day of Judgment:*
>
> *One who makes a covenant in My Name, but he proves treacherous,*
>
> *One who sells a free person (as slave) and eats the price,*
>
> *And one who employs a labourer and gets the full work done by him but does not pay him his wages". (9)*

This is an authentic Hadith, narrated as briefly by Al-Siouti, but not ascribed to Allah the Mighty, the Majestic.(10)

The Hadith indicates the prohibition of selling a free man.

> *"Extremely great is the sin of the seller who derives benefit, whatsoever, from such sale because the one, who sells a free man, unlawfully usurps a subject of Allah, to whom no body has a right except Allah".*

Allah, the Lord of all worlds, being the One from whom this "bondman" was usurped, takes such usurper as an opponent.

Jurists have unanimously agreed that sale of a free man is impermissible.

Ibn Al-Mundher said: "they have all agreed upon the invalidity of selling the free".(11)

6. Jurists justify the impermissibility of selling a free man, nor of his organs on the basis of non-assessability money-wise; and that among the conditions of a valid contract of sale is - unanimously - that the subject is contractable, being assessable property in possession and of beneficial interest.

Man, as a total entity, is not to be possessed, nor to be subject to ownership or possession because what is subject to rights and contracts are money and property, but man, as Al-Karkhi says "was created to possess money and between being possessed as money and being a possessor of money there is quite a contradiction"(2).

If the Hanafite jurists state that man's organs such as the hand, the leg, the eye, the nose, the ear, and others are treated as property - as Al Kassani says(13) - this does not mean being an estate or real "money" but they can be compensated for by wergild and money in case avenge is dropped for some reason, as in the case of the ear, or the order to amputate the hand, for instance. If the man who cuts the organ is not a doctor, because the order of amputation casts doubt, and the doubt here is deemed as a fact, however it necessitates a wergild, because the preservation of Muslim's blood is looked upon as inviolability, and dropping of avenge for doubt does not hinder the stipulation of money for the inviolability.

7. However, jurists, though viewing that man or man's parts are not contractable, have excluded the milk of a wet-nurse, in the same that though it is part of the wet-nurse, and is not subject of contract, they have rendered permissible the contract of breast feeding which applies to the milk itself, by way of exclusion and in favour of dire necessity, because the baby's right to live through milk nutrition is more important then human dignity, and the preservation of human life is more important than moral the consideration, because such are the qualities of the self, and those are the props on which the self rests. That's why this contract is made permissible due to dire necessity, and situations of necessity are excluded in law.

Jurists have looked upon the contract of breast-feeding as one of hiring, as a wet-nurse is hired for feeding the baby with her milk. Since the contract rests on the consumption of the subject of material value, which is milk, and hiring is originally attached to a benefit, but not an object of

material value, then juristic analogy deemed it impermissible, and consequently decided that the consumption of an object of material value, namely milk, is not intended, but is subsidiary to the service of the wet-nurse given to baby.

There are matters that are originally impermissible, but permissible as a subsidiary.

The case applies to the milk of the wet-nurse. It is not permitted to conclude a contract for it, being a part of a human being, but permissible as a subsidiary.

This juristic adaptation represents application of discretion, substantiated by the text as Allah says:

> *THEN IF THEY SUCKLE THEIR CHILDREN FOR YOU, GIVE THEM THEIR HIRE.*
>
> *(S65:V6)*

8. Treatment with Human Organs of the Dead on the basis of what we have mentioned about human dignity, Hanafite Jurists, and the multitude of Jurists in general, do not allow benefiting from the organs of man for treatment or for any other purpose, whether man is alive or dead. However, they deem permissible remedy through things not human existing in animals even if they are dead and whether Allah's name was mentioned when it was slain or not, of bones or limbs, in dire necessity, with the exclusion of pigs, due to their impurity (14).

"Necessity" as technically defined in the Fundamentals of Jurisprudence is: an occurrence that one cannot overcome unless by the perpetration of an impermissible thing to be therefore permissible.

Nevertheless, the Hanafite scholars confined benefiting from the parts of the dead animal for treatment to the following conditions:

A. To have a Muslim doctor decide this.

B. To lead to recovery.

C. To have nothing permissible as a substitute(15).

As regards the Shafiite jurists, their attitude is perhaps more comprehensive than that of the others, concerning benefiting from the organs of man if he is dead.

They permitted eating man's flesh if a person is driven by a dire

necessity, Imam Al-Nawawi, justified this by saying that the inviolability of the living man is more pressing than that of the dead,(16) and the harms ensuing from eating man's flesh are less than those entailed by his death.

Sherazi and the multitude of Shafiite jurists were quoted as asserting this.

Al-Darmi was also quoted as establishing a difference between two cases; if the dead man were an infidel thus eating his flesh is permissible, and if a Muslim there are two viewpoints:

If the one driven by dire necessity is a non-Muslim subject, and he finds a dead Muslim, they see in this permissibility two points:

Al-Nawawi mentioned that the established analogy renders it impermissible due to the principle of human dignity(17).

It seems that the necessity of establishing treatment through the transfer of the human organs of the dead to the living is like the necessity to eat the flesh of the dead; moreover, it is so with greater reason, because eating the flesh of the dead sacrifices the part eaten to preserve the life of another person, whereas transferring an organ to the living preserves it alive, and is, even more, continuation of the life to the living person.

9. Benefiting from the Organs Of the Living:-

As regards benefiting from the organs of a living human, through eating by the one driven by a dire need, or the necessity of treatment, the Shafiite Jurists presented four possibilities as follows:-

First:

That the donor is legally subject to be killed is by no means protected such as the belligerent and the apostate, the person driven by a dire necessity is indisputably permitted to kill and eat them.

Second:

That the donor is covered with sanctity of life but convicted to death due to a crime whose prescribed punishment is "killing" as specified by the Law-Maker such as the married adulterer, the aggressive warrior (who disobeys the fair Imam and is an outlaw) and the one who denies prayers.

Al-Nawawi expressed in killing and eating them two views : the more sound is permissibility - He says "Because we have been prevented from

killing those people to give government full power to consider the matter, so that false allegations against him may be warded off, and this excuse does not necessitate impermissibility when dire necessity is establsihed"(18).

Third:

That the donor is not protected, by virtue of a right established to the one who cuts, such as the right to avenge for the avenger of blood on the murderer. That is the one Al-Nawawi decided that killing in retaliation and eating are permissible, whether the ruler attends his killing or not.

Fourth:

That the donor is protected, such as the non-Muslim subject, the one who enters into a covenant with Muslims or takes a pledge of safety from them. The killing of such people for eating is indisputably forbidden(19).

10. If the necessity of treatment is like that of eating, then cutting off from the people who belong to the second category, as mentioned by Imam Al-Nawawi, such as the married adulterer, the aggressive warrior and the one who denies prayers, should apparently be prohibited, because killing them as a prescribed punishment is in implementation of a Sharia provision, whereas cutting parts from their bodies is an excess beyond the right and the prescribed punishment, a matter impermissible in the Sharia except if permission is taken from them.

The permissibility of cutting is confined to the first category, the aggressive warrior and the apostate, as they both harbour enmity against Muslim people; the first sheds blood in Muslim lands, and the second shows dissidence from the Muslim community and becomes an enemy to Muslims.

Also the permissibility of cutting is confirmed to the third category, the murderer, on condition that cutting does not lead to mangling the dead body as prohibited by the Sharia, because what is lawful is to kill the aforementioned, and the Law-Maker commands that killing whatsoever the case is must be in a good way on basis of the Hadith(20):

> *"Verily Allah has enjoined goodness to everything; so when you kill, kill in a good way"(20).*

If cutting does not lead to mutilation and torture it is then permissible.

11. The One Driven By Dire Necessity Benefiting From His Own Body:

Al-Nawawi stated two views in this question:

The first view is held by Abu-Ishaq, who allows it on the basis that it brings life to a man through an organ, and so it is permissible. It is also permitted to cut an organ if it suffers from the "flesh eating" (perhaps Grangrene) as this means saving his life.

The second one is held by some Shafiite Jurists who say that such matter is impermissible, because if an organ is cut, then the risks endangering the patient are greater.

It seems that if cutting an organ definitely lead to ruin or what implies ruin, paralysis for instance, then it is impermissible because in this case, it will be a suicide and precipitation of death, a matter forbidden in the Hadith:

> *"Whoever purposely throws himself from a mountain and kills himself will be in the (Hell) Fire falling down into it and abiding therein perpetually forever; and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the (Hell) Fire wherein he will abide eternally forever; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand and stabbing his abdomen with it in the (Hell) Fire wherein he will abide eternally forever"(21).*

On the other hand, if the cutting does not definitely lead to ruin, through experience or the operation of a skilled doctor, then it must be permissible such as cutting the hand, the finger, the kidney and the like.

It is apparent that such cutting is made permissible, conditional on:

(a) The organ cannot be substituted by others.

(b) Cutting does not lead to ruin or death.

12. Cutting An Organ From A Living Person For Treatment Of Another:

In this question, Imam Al-Nawawi emphatically states:

1. It is indisputably impermissible for man to cut organs for himself from another o[illegible]o is lawfully protected.

2. Other persons are indisputably forbidden to cut from their body and give to the one in a dire necessity, as stated by "Imam Al-Haramain and Al-Ashab"(22).

The Hanafite scholars also stated that the one driven by a dire necessity should not eat the food of another one also in dire necessity, nor eat any part of his body(23). Their Justification is that harm cannot be eliminated by another harm.

13. The Permissibility Of A Living Person Allowing Cutting An Organ From Him For Treatment Of Another:

This is an aspect of altruism and desired charity which can also be understood from what Allah, highly exalted be He, says:

> *AND WHOSOEVER BRINGETH LIFE TO ONE IT SHALL BE AS THOUGH HE HAD BROUGHT LIFE TO ALL MANKIND.*
>
> *(S5:V32)*

What greater reward can be desired.

Nevertheless, it may be superficially understood from the Hanafite texts that cutting an organ from a living person for his treatment is permissible, not to serve as food for the one driven by dire necessity. Hanifite Jurists stated that if one man says to another "cut off my hand, and then the other man does so", the rule is that if (cutting) is made for the purpose of treatment, like the case when his hand is afflicted by gangrene then there is no harm in the cutting, but if the purpose is other than treatment, then it is impermissibile(24).

Ibn Abdeen says: "If one says to another: cut my hand and eat it, then cutting is impermissible", because it is not permissible to eat man's flesh even in dire necessity due to the principle of human sanctity(25).

14. Accordingly, Hanifite scholars by no means allow man's flesh at necessity, not for oneself, nor for others due to the principle of human sanctity.

It is also impermissible, as they maintain, to cut any of man's organs for any purpose other than treatment.

The only justification which they give is the one aforementioned namely necessary treatment.

However, if cutting an organ in man's body is for his own treatment, then it is permissible, on the basis of necessity, as already set forth in the

first text from which it is readily understood that it is impermissible to cut an organ from one for the treatment of another, in the absence of necessity, which is here in this context the fear of ruin and damage, or even the fear that the cut organ causes a detriment.

However, can we say that : (the Hanifite Jurists permitted cutting an organ for treatment, as this is the principle, even for the treatment of the person from whom organ is taken and for fear of causing detriment to him. Yet, the fear that any other man may be exposed to death is like detriment caused to oneself as all living human beings can be viewed as one entity.

Preserving life is something required, lawfully - ascertained and made desirable as in the former verse.

Hanifite scholars and others stated that if one finds a human being on the verge of drowning, and he can save him, but he does not, until that man dies, then he has committed a wrong-doing. Some Hanbalite scholars, moreover, said that he is under the obligation to pay blood money. Therefore, what objection is there in the permissibility of cutting an organ from one person for treatment of another, if he allows donating the organ in his life, or in a will after he dies but with no material compensation received, and under the conditions we shall mention. If it is said : The Hanifite Jurists stated that man's flesh is not permitted in cases of dire necessity, on the basis of the principle of human dignity, as already mentioned, we can answer by saying that: they stipulated the impermissibility of eating man's flesh, because of damage as it contradicts human sanctity. Whereas cutting for the treatment of others does not involve damaging man's parts, not wasting his sanctity so as to make it forbidden, but it saves the lives of others, and preserves the cut organ by preserving life of the recipient who is under treatment, and such cutting does not denote any humiliation, on the contrary, it is a sort of relief, revival and help. And these are things which the general rules and absolute precepts of the Sharia do not object to, but encourage and urge one to do.

15. However, cutting should be controlled by the following conditions:-

A. Cutting is made possible through an absolute permission from the donor. However, if cutting occurs without his permission, then it becomes forbidden. Moreover, if cutting results in death of person or damage of an organ, then the one who makes the cutting is held liable, and must pay indemnity and if he makes it deliberately, then he should be subject to avenge.

B. The consenting donor should be of age, discerning and exercising free will and, moreover, enjoying the capacity to exercise his rights as permission of cutting means that he disposes of part of his self, of which he is entitled in what is not conflicting with the Sharia.

C. The donor should not be selling his organ, as jurists unanimously agree that it is impermissible to sell man, nor his parts, in respect for him the abuse brought about through the sale arouses a feeling of humiliation, as Al-Kassani says(26), “man, with his entire parts is respected and honoured, His abuse through sale and purchase does not denote any of that dignity nor respect(27)”.

D. Donation of an organ does not lead to death of donar nor damage of biological and/or religious duties.

E. Permission of cutting is released in man’s life, or through his legatees after his death.

F. Permission of cutting after death does not result in mangling of the dead, as the Prophet forbade mutilation saying:

“you will find mutilations but these I did not command”.

G. Execution of cutting takes place after the ascertainment of man’s death, if the organ is vital such as removing the heart or lung, so that death of a person who leads a normal life is not precipitated, on the basis of the principle of “the possibility of living”, as jurists explain.

Being on the verge of death; such as the case with the one finally sentenced to death; has no effect on the permissibility of cutting, because in this case it will be like suicide if through his permission, and unlawful homicide if without his permission. Both cases are forbidden, but the latter necessitates indemnity as jurists say.

H. Cutting takes place to save the life of another, in the sense that such organ can not be substituted by animal organ or any artificial organ in establishment of the principle of necessity, because the general rule is prohibition as aforementioned.

16. Purchase of Man’s Organs:-

We mentioned that a free man is not to be sold, and that selling him or some part of his is not allowed, as unanimously agreed upon.

Nevertheless, if a patient is forced to receive an organ of another

person to his body, and he does not find any person to donate such needed organ, or does not find any person to donate such needed organ, or does not find any artificial substitute, then purchase of that organ is permissible within the aforementioned conditions for cutting from living people, due to a necessity and in this, the patient does not make a wrong-doing, but the sin is the seller's.

In this context, and for similar situation, Allah, highly exalted be He, says:

> *WHILE HE HATH SURELY DETAILED UNTO YOU THAT WHICH HE HATH FORBIDDEN YOU, UNLESS YOU ARE DRIVEN HERETO (BY NECESSITY).*
>
> *(S6:V119)*

In the Accessories (of Jurisprudence) there is reference to permissibility of purchase and impermissibility of sale. Hanbalite scholars state that the sale of the Munificent Qur'an is forbidden, even for the settlement of a debt.

Imam Ahmad says (we do not know any excuse for selling the Book) (29).

Abdullah Ibn Omar, says (I wish that hands were cut for such sales) (30).

The Hanbalite scholars, by way of Justification said : because giving due respect to it is obligatory and its sale implies abuse and disrespect, whereas purchasing the Munificent Book is not disliked because such purchase is looked upon as a deliverance like purchasing of a captive from belligerents) (31).

Annotations

1. Related By Al-Bukhari.
2. Related By Al-Bukhari.
3. Related By Al-Bukhari.
4. Related By Muslim.
5. Agreed Upon.
6. Narrated by Ibn Al-Mubarak, lacking first transmitter, however, evidenced by Al-Tibrani.
7. Related by Imam Ahmad, Abu-Dawud and Al Tibrani.
8. Badaa'e Al-Sanaa'e", by Al Kassani (5/305), Dar Al-Kitab Al-Arabi, Beirut.
9. Related by Imam Ahmad, Al Bukhari and Ibn Majah.
10. See : "Al Jame" Al-Sagheer bi Sharh Al-Minawi, (3/315, 316, 3494)
11. See "Al Igma", by Ibn Al-Mundher (114), printed by Dar Teeba, Riyadh 1402 A.H. 1982 A.D. and "Kashshaf Al-Qina", by Al-Bahouti, printed by Maktabat Al-Riyadh Al-Hadeetha - Riyadh
12. "Al Mabsout", by Al-Sarkhasi (15/125) printed in Beirut.
13. "Badaa'e Al-Sanaa'e", (7/236)
14. "Al-Fatawi Al-Hindia", (5/354/355), Third Edition, Dar Ihiaa Al-Turath Al-Arabi : Beirut.
15. "Al-Dar Al Mokhtar Wa Rad Al Mehtar Aleih", (5/259), printed in Beirut.
16. "Al Majmua'a", by Al-Nawawi, (9/44) Dar Al-Fikr, Beirut.
17. Ibid.
18. Ibid. (with a change). see "Rawdat Al-Talibeen", by Al-Nawawi also, (3/284), printed by Al Maktab Al Islami, Beirut.
19. Ibid.
20. Related by Imam Ahmad and Muslim, see "Al-Jama" Al-Sagheer bi Sharh Al-Minawi (2/245), No. 1761.
21. Related by Imam Ahmad, Mulsim, Al-Termidhi, Al Nisa'i and

Al-Derami.

22. "Al Majmu", (9/45).
23. "Al-Ashbah Wal Nazaaer", by Ibn Nageem, (87), printed by Dar. Al Kotob Al Elmia : Beirut. Also see "Al Ashbah Wal Nazaaer", by Al-Siouti, (26), printed by Dar Al Kotob Al Elmia : Beirut.
24. "Rad Al Mihtar Ala Al Dar Al Mokhtar", (5/352), quoting "Al-Tatar Khaniah and Sharh Al-Tahawi.
25. Ibid (5/215).
26. "Badaa'e Al Sanaa'e, (5/142).
27. Ibid. (5/145)
28. Related by Imam Ahmad and Al Bukhari.
29. "Kashshaf Al-Kinaa" : (3/155).
30. Ibid.
31. Ibid.

SALE OF HUMAN ORGANS

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Introduction

On Determining Domain and Plan of Research:

The objective of this research is to know the lawful legal consequence of a human organ.

The legal consequence of any sale in terms of contracting or not, validity or not, permissibility or not is contingent upon the fulfillment of the conditions stipulated by law in sale, and deduced by Muslim jurists from Sharia texts and rules.

The terms and conditions of sale are numerous, some of which pertain to the parties to the contract (seller and purchaser), some to the element of (offer and acceptance), while others to the subject of contract, the sold object.

The domain of this research does not tackle all such conditions. We shall exclude from the condition believed to indisputably to be fulfilled in the sale of human organs, as it is not necessary for the research to consider the terms and conditions of the two entire parties, nor those of the aforementioned element, nor many others stipulated as regards the subject of contract, such as the condition of "existing" and the condition of "being known", the ability to deliver and finally voidness of invalid conditions. All such terms and conditions can indisputably be fulfilled in the sale of human organs.

Nevertheless, the condition which should be central in the research, and which is most controversial is one stipulated by the jurists as regards the subject of contract, viz-the "sold object", that it should be "evaluable

property". Jurists have stipulated that condition for concluding the sale, having effectiveness and ensuing consequences. None of the jurists has disagreed in this regard. Yet, they have differed in application.

Such matter necessitates studying the meaning of this condition on the one hand, and the old juristic application to the sale of human parts on the other hand.

There is another matter that is irrelevant to the terms and conditions of sale. This matter should not be overlooked in our discussion of the legal consequence of sale of human organs, namely that such sale is not commonly concluded except with a harm inflicted upon the body of the seller. So, is it lawfully permissible for man to accept inflicting harm on his body to receive a material return or other compensation?

These are the questions on which the research focuses. We shall tackle them, God willing, under four studies and a conclusion as follows:

— Study (I): Meaning of the condition of "Estate" ownership and "Valuation" as viewed by Jurists.

— Study (II): Applications of that condition to sale of human organs.

— Study (III): Discussing the opinions of Jurists in the right of contemporary medical achievements.

— Study (IV): Extent of contradiction between sale of organs and the principle of impermissibility of inflicting harm upon the body.

— Conclusion: In the findings of the Research.

Study I
Meaning Of "Estate", "Valuation" And Possession

Ibn Qudamah defines sale as: "An exchange in money in terms of ownership and possession".(1) Saheb Al Dur also defines it by saying: "sale, Sharia-wise, is an exchange of a desired object for another".

Ibn Abdeen interprets the "desired object" as the thing sought by man.. that is money"(2).

Jurists have unanimously agreed to stipulate in sale the condition that money should be valuatable. They have not disagreed as regards this condition. Nevertheless, they have differed in the style of expression. Such difference could be categorized in three trends:

The first trend:

Its advocates expressed this condition as aforementioned, and differentiated between the concept of Estate and valuation, rendering the first one a matter relevant to human consideration, while the other to Sharia consideration - Money, as viewed by them, is everything existing to which the instinct of man inclines. The "Valuatable" is every money the benefit of which is permissible by the Sharia. Estate, for them, is a condition for valuation but not the opposite. Wine, for instance, is regarded as money, but it is not valuatable, and the carcass, for them, is not money nor valuatable.

Among their definitions of money is what some of them say: (it is the thing to which the instinct of man inclines and that can be saved for the time of need). Others say (it is that to which the instinct inclines and for which one may give or deny). A third group contended (money is a term other than that for a human, created for his interest, to be collected and disposed of by an act of volition) (3).

The second trend:

Its advocates contented, themselves with expressing the condition that the sold object should be on Estate, without mentioning "valuation". Disregarding valuation here is not because they do not stipulate it in the sold object as a condition, but because they consider the concept of Estate including the meaning valuation.

For them, money is everything of real benefit. everything whose valuable consideration as lawfully permissible in cases of no dire necessity, otherwise this thing is not called money if it is not of benefit to man and is made impermissible by the law-maker is not called money, even if it is made permissible in case of dire need.

The Third trend:

Advocates of this trend did not make this aforementioned condition of Estate or that of valuation. Yet, they stipulated for the sold object being pure and of lawful benefit presently or eventually. They contended with mentioning the elements of Estate as viewed by the advocates of the second trend. They moreover, paid no attention to calling it "money", and this is a formal difference as we see.

To sum up, it is manifest that the description of Estate and valuation in the sold object as viewed by the jurists is not materialized, unless with the

fulfillment of the following conditions:

1. It should be of actual benefit, which means that man can benefit from it in any aspect of interest such as food, drink, clothes, adornment, transportation, medication... etc.

The benefit derived from every object conforms with the nature of its creation. Qaluoubi says: It is obvious that the benefit derived from anything goes in accordance with its nature. The benefit of a leech is sucking blood, the benefit of a peacock is to gratify the sight with its colour, the benefit of the nightingale is to enjoy its voice, the benefit of the cat is trapping the mouse, and finally the benefit of a monkey is teaching..."(6).

Whereas the things of no benefit, which are not imposed by any of man's interests should indisputably not be sold. It is natural that many things of actual benefit but not discovered yet by man are included in such things.

2. Its benefit should be permissible by Sharia in any aspect of benefit in the absence of dire necessity.

It is not a condition that Sharia permits its benefit in all aspects whatsoever to which it is fit according to creation. However, it is sufficient to render its benefit permissible in a single aspect, such as the dog whose benefit is permissible in hunting and guarding, but not in eating, adornment or anything else.

It is not enough for the fulfillment of this condition that Sharia permits its benefit in case of dire necessity such as wine and carcass (7).

Some requirements for this conditions:

(A) The sold object should be religiously pure. If it is impure, sale shall be invalid and impermissible, such as the pig, carcass, the organ of animal which is cut in its life, being a carcass... etc. (8).

(B) The sold object should not be something that is not used except in the impermissible, such as the idols, statues whose materials are not of benefit, instruments of entertainment which are also of no benefit except in prohibited entertainment... etc. (9).

(C) It should not be honoured beyond sale, ownership and circulation, such as the free man and the Munificent Book as viewed by some jurists (10).

(D) Its ownership is possible without wasting away the right of Allah,

Exalted be He, or the right of man. Jurists of Malikite school pointed out this meaning and cited the example of mosques and Kaaba for things which cannot be owned except by wasting away the right of Allah, Exalted be He. They also cited the example of a free man for things whose ownership is not conceived unless by wasting human rights (11).

3. It should be a material object. This condition is stipulated by the Hanafite school. For them, sale is not effected unless of material objects but not of utility. They were keen on highlighting this condition in their definitions of money as aforementioned.

However, other jurists do not stipulate that condition in sale nor in the establishment of the concept of Estate.

Study II
Applications of Jurists as Regards Condition of Estate And Valuation To Sale of Man And Human Organs

Jurists unanimously agree upon impermissibility and invalidity of selling a free person. They do not consider man as "money" on the basis of the authentic Hadith by the prophet:

> *"Allah, the Mighty, the Majestic said: I will be an opponent to three persons on the Day of Judgement: One who makes a covenant in My Name, but he proves treacherous, One who sells a free person (as a slave) and eats the price, and one who employs a labourer and gets the full work done by him but does not pay him his wages" (12).*

Denying "Estate" in the free person, for them, is not attributed to non-benefit, as the benefit of man are numerous and their exchange in hiring is permissible as it is known. However, this denial is ascribed to other implications to which jurists referred in their classifications as follows:

(A) Some of them ascribe the reason to the honour by Allah, that is given to man. He, Highly Exalted & Glorified, says

> *AND ASSUREDLY WE HAVE HONOURED THE CHILDREN OF ADAM. (13)*

His honouring comes through the peculiar characteristic of mind which is cause of enjoined duties, and because for man, all other creatures were

harnessed at his disposal (14). Considering man as "money" to be owned and circulated contradicts with such honouring as it arouses the feeling of abuse and humiliation. Ibn Abdeen, says (Man is lawfully honoured even if he is an infidel; being the subject of a contract, and abusing him therewith and attaching him to the inanimate is humiliation to him, and that is impermissible) (15).

Such honouring never departs from man neither willingly nor forcibly. It only departs from man on the single occasion of disbelief; if hostility against Islam and falling captive are combined together in him, then his honouring is denied by permission of the Law-Maker, and he becomes "money" to be sold and purchased (16).

(B) Other jurists hold the view that the reason behind this is the inadmissibility that a free man becomes part of the property of another, because he is, as being the worth more entitled to "his self" than anyone else and his inclusion in the property of others wastes away his right (17). It is not to be said, by way of answer, that he owns himself, so he can waive his soul, because it is inconceivable that the one who concludes a contract is the subject of the contract, and that the seller is the sold object at the same time, whereas sale of man by another is not also lawfully conceived, because man is not entitled to sell what he does not own, and a free man is not included in the property of anyone (18).

(C) A third group holds the opinion that the reason is that considering man as "money" contradicts with his lawfully established inalienable freedom, because such consideration renders him liable to sale and ownership, the matter which conflicts with his right to freedom and holds him back from having a free hand in what Allah has made permissible to him (19).

As far as Human Organs are concerned, Jurists unanimously agree that they are not money qua money, nor should they be subject to sale. Jurists do not disagree except on human milk. The multitude of Jurists permit its sale, whereas scholars of Hanafite school deem it impermissible.

The reason behind their disagreement is not attributed to difference in opinion as regards the principle upon which they unanimously agree, but to the difference in justifying this principle as follows:

1) Hanafite Jurists hold the view that the reason for impermissibility of selling human organs is attributed to the honouring particularly conferred

by Allah upon man. They look upon each organ of man as the "his self". For them, honouring includes man and each part of him. This honouring keeps going all over his body with no exception for any part, sale of which is invalid and impermissible, even if benefit from any organ in any aspect whatsoever is possible.

Among the things which they stipulate the invalidity and impermissibility of selling thereof are human hair, bones, skin and woman's milk if obtained by milking. Al-Merghinani says: It is impermissible to sell nor benefit from man's hair, because man is honoured and not abused. So it is not permitted that any of his parts be humiliated or abused...) (20).

2) The multitude of Jurists hold the view that the reason behind the impermissibility of selling human organs is that if they are cut off and separated from man's body, they become of no benefit, or impossibly useful in a way permitted by the Sharia. They cannot be looked upon as "money", as already mentioned; that the thing is not to be considered as "money" unless it involves real benefit permitted by the Sharia in conditions of no dire necessity.

I do not find among such jurists someone who gives reasons for the impermissibility of sale of human organs in contradiction with the principle of honouring man.

Therefore, when they find a part of man, which is of benefit if cut off from him in any permissible form, they approve the permissibility of its sale, in contrast with the Hanifite school in respect of the woman's milk when obtained by milking.

The sale of a woman's milk is also permissible by the Malikite, Shafiite and Hanbalite schools which holds a widespread view and accepted argument that it is pure and of benefit. The Law-Maker made it permissible to drink it in the absence of need. So it can be deemed "money" subject to sale and fulfilling the two elements of "Estate": real benefit and lawful permissibility of such benefit (21).

Ibn Qudamah expresses this trend in a way that serves well here. He said: "As for the sale of women's milk, Ahmad says I "dislike this", and our fellow jurists differ as regards its permissibility. The words of Al Kharqi denote its permissibility as he argues that "Everything is of benefit". This is the opinion of Al-Shafii'. Another group of our fellow jurists holds the view that its sale is impermissible, and this is the attitude of the Hanifite school... as it is a fluid coming forth from a woman, and it is impermissible

to sell, exactly like the sweat, and because it is part of a human being all other parts then Ibn Qudama says:

"The first opinion is more correct, because milk is pure and of benefit, so its sale is permissible, like that of the ewe, and because it is permissible to receive a compensation for it as the case is with the wet-nurse, so it is of benefit. But the case differs with the sweat because it is of no benefit. That is why the sweat of the ewe is not sold but its milk is... the impermissibility to sell a free man is simply because he is not owned and it is also impermissibile to sell the organ cut from him because it is of no benefit) (22).

Study III
Discussing Opinions of Jurists In The Light of Contemporary Medical Achievements

As already mentioned, jursits unanimously agree on the invalidity of sale of any part of man except woman's milk, either due to honouring man with his entire organs, or for the inconceivability of deriving benefit from human organs after separation.

It is indisputable that their approach is sound on the basis of their conception of the dimensions of the question. It is an acknowledged fact judging a thing is a branch of its conception. They did not conceive that deriving benefit from any human organ separated from the body is possible in a considered interest, nor did they imagine the possibility of benefiting from such organ in any form without prejudicing man's honour.

To bring the picture nearer, if we suppose that we live in an age like theirs, when medically speaking, the transfer and transplantation of human organs from one man to another, and blood transfusion with its serious consequences were not known nor even conceived; and also when no specialized expert thought of the possible benefits of any organ separated from the human body as a treatment for any kind of disease. I wonder, what were their concepts of benefits from the transfer of a kidney, an eye, a spinal marrow, a bone, the skin or any other of the human parts?

Deriving benefit from a human part to serve the same function for which Allah created it in such a way that transfer for the service of a new soul other than the one for which this human part was created and, to be the cause of saving the life of the new soul from perdition, such procedure

was not known before, nor occurred to the minds or imagined by ancient scholars. If they had imagined that transfer, they would have supposed its occurrence and endeavored to deduce legal consequences.

As already mentioned, they tackled in general the legal consequence of the sale of human parts, hair, bones, skin and woman's milk as follows:

As far as the human hair is concerned, along with their conception of deriving possible benefit from it impermissibility of its sale on the grounds of a lawful text prohibiting this, as the prophet says:

> *"Allah has cursed the woman who artificially lengthens (her or someone's) hair, and the one who gets her hair lengthened (23), both by someone else's hair".*

As regards man's bones and skin, they unanimously agreed on the impermissibility of their sale on the basis of the impossibility of deriving benefit from them except through the methods which violate the honour and respect bestowed upon man.

Concerning woman's milk, a multitude of jurists rendered permissible its sale as it is pure and of benefit. They did not see in this any contradiction with human honour.

These are all the points tackled by ancient jurists as regards the organs which could be subject to sale. They specified them in detail. They did not think of anything else except this. It is natural that their reasoning be based on their conceptions as regards this question.. the most improbable of which was the likelihood that a man embarks upon selling a human kidney, blood, an eye or other organs, due to the absence of any probability that a need may arise for such organs in an age that knows nothing about organ transfer or transplantation, or its effective role in saving the lives of patients.

Nowadays, however, the matter has become extremely different. Some medical and scientific innovations have taken place calling for the reconsideration of the reasons given by previous Jurists when they passed the ruling of the impermissibility and invalidity of the sale of human organs.

As regards deriving possible benefit from this and the need of man for it, there is no longer any dispute, specially after the real success of the operations of the transfer and transplantation of organs and saving of many people from definite death.

As far as the lawfulness of deriving such benefits is concerned, it is evident that modern Islamic Jurists reasoning has given judgement when rendering permissible the donation of some organs for the purpose of transplantation for patients in need, because the judgement which permits the donation of a thing for a specific purpose is in fact a Judgement admitted the lawfulness of deriving benefit from this thing for that purpose.

However, still a question remains on the extent of contradiction between the sale of human organs and honour and respect bestowed upon man.

More often, I believe that the sale of human organs for the purpose of profit, trade, circulation or material gain is the thing which arouses the feeling of humiliation and contradicts with the principle of human dignity. Sale of human organs for purposes other than those for which they are created is also included. If organs, however, are sold to save the lives of patients from perdition, and used in the same manner as that for which they were created, by placing them in the locations through which they serve the same functions when Allah created them, and if they are not sold for purposes of trade and material gain, then such sale, within these limits and restrictions is permissible as it implies no humiliation nor contradiction with the dignity of man. Is there any implication of disrespect and degradation in the transfer of man's kidney or some of his blood to another person whose life is contingent upon such transfer, God willing, even if the owner of the transferred organ receives a financial return?

Yes, someone may say: In sale, ownership of the object sold is assigned to the purchaser and that of price to the seller. The right to ownership is a material one granting its holder all sorts of disposal, exploitation, sale, donation, mortgage, lending, or anything of the like, all of which contradict with human dignity as already established.

In reply to this, it is said that the right to ownership only grants its holder the right to derive benefit from what he owns in the proper way, and as permitted by law, not all forms of benefit unrestrictedly. The one who purchases a beast of burden is not lawfully allowed to dispose of it through killing or perdition without a justifiable reason. The one who purchases grapes is not entitled to derive benefit from them by extracting wine. The one who purchases a dog, cat or donkey is not lawfully allowed to benefit from them by eating... etc. (24).

Also the one who purchases a human organ acquires the right to deriving benefit from it. Yet, such right is restricted by lawfulness. It is

indisputable that using such an organ in functions other than those for which it was created for, or circulating it, or trading in it is regarded impermissible, as it contradicts with the principle of human dignity established by law.

Such acquired right on the sold organ does not permit sale except for purposes not impermissible by the Sharia. Deriving benefit from that organ is restricted to that benefit for which the Creator created it in man.

The restriction is generated from the Sharia, and does not need the stipulation on the part of seller.

It is true that man is not permitted to sell a thing to someone whom he knows or strongly believes that he would not use it except in the impermissible. The case applies to the owner of grapes who is not permitted to sell his grapes to someone whom he knows he would not use except for the extraction of wine. It is also impermissible to sell dogs to the one who would not use them except for eating or selling as meat for people to eat (25).

It is also impermissible for man to sell an organ of his body to someone whom he knows that he would use it for the purpose of trade and profit, and in other things implying humiliation to human dignity.

In other words, the analogy established in the sale of a human organ in relation to a free man as regards impermissibility is one of great difference, due to the fact that the invalidity of sale of a free man is attributed, as already mentioned, to the contradiction implied in that sale with human dignity, on the one hand, and to the wasting of his lawfully established right, on the other.

Such two implications are ruled out in the sale of human organs. No harm is inflicted upon human dignity if a human organ is sold to be used for the purposes for which it was created, while asking for no material gain, but with the aim of saving the life of a patient from perdition. The free man is not to be sold for this purpose.

The sale of human organ also does not contradict with man's freedom, in the sense that if man sells part of his blood or a kidney of his, he does not lose anything of his freedom.

A third aspect is that the analogy established in the separate human organ in man's life in relation to the cut organ of an animal in its life is one of great difference, because jurists hold the view of the impermissibility

and invalidity of cutting the organ or an animal in this case only due to its impurity, being carcass, and the carcass of an animal is impure.

But man is pure in all cases. His organs are also pure whether they are separated from him or not. Al Kassani was inclined to this in reply to those who Justify the impermissibility of selling man's hair, and bones on the basis of impurity. He thought that it was enough to bring forward the reason that it contradicts with the dignity of man and his organs (26).

This subject has also been discussed by some Malikite jurists and others. They rendered permissible the sale of woman's milk, putting aside that analogy and that argument of contradicting with the honour of man, by arguing that such milk is pure and of benefit. It was mentioned that Aisha, may Allah be pleased with her, sent her milk to an aged man to drink it, and to be in a degree precluding marriage to her. If such milk had been impure or contradictory with human dignity, the companions would have denied that deed, but none of them did so, the matter which evidences the permissibility of deriving benefit from it, even for the purpose of precluding marriage, although no dire necessity is involved (27).

Results of the Discussion of Ancient Jurists:

As already mentioned, it is evident that the meanings stated by the jurists, and on which they have established the invalidity of sale of any human organ (with the exception) of the controversy over woman's milk), are no longer applicable to sale of human organs for treatment purposed in the present time, or at least have become possibly avoidable in the practice of such sale in reality. There is no room today for the allegation that one can derive no benefit from a human organ. Nor is there space to state the impossibility of deriving benefit from it unless with the sacrifice of human dignity.

Since it became evidently clear to them that deriving benefit from woman's milk is possible, along with avoiding the prohibited matters, and observing such principles on which they have based their opinions, we have found the multitude of them rendering sale permissible.

Most probably, had they known the transfusion of human blood and its benefits as known by us today, a dispute would have been triggered over its sale as it happened with the sale of woman's milk.

Study IV
Contradiction Betwen Sale of Human Organs and The Principle of Impermissibility of Harming the Body

If the matter had been confined to such considerations upon which jurists based the impermissibility of sale of human organs, it would have been possible to end the discussion on this question by giving more weight to the opinion that sale of human organs is valid under some conditions, now that it is apparent that such sale is possible without prejudice to such considerations.

However, there is another matter not yet touched by jurists, namely, that sale of a man's organ while still alive mostly entails harm inflicted upon him in some form, at least loss of physical fitness. They did not discuss this matter, in the belief that the other justifications were sufficient, and, even more, that there was nothing that necessitated raising it in their time.

Yet, in view of the recent medical achievements, along with which sale of human organs has been possible without compromising the principles mentioned by jurists, research on the legal consequence of that sale cannot be complete and accurate, unless when knowing the opinion of law as regards the one who sells part of his body and sacrifices some of his bodily fitness for material return.

It is necesary, while discussing this subject,to distinguish several cases:

(A) There is no doubt about the impermissibility of sale of a human organ, the loss of which leads to death, such as the heart, for instance, because this is suicide, which is a deadly sin.

(B) More often, sale of part of human blood is not impermissible if the donor's health will not be affected or harmed.

Analogy can be made concerning woman's milk whose sale is permissible by the mainstream of jurists.

(C) Other organs vary in the bodily benefits and harms caused by their loss. The legal consequence of sale should be considered in relation to the rule governing the contradiction between the harms and benefits for man, that's taking the less detrimental, if not able to avoid both, and

enduring the little harm toward off the great one. Al-Ezz Ibn Abdulsalam says: In case benefits and harms are involved, if it is possible to get the benefits and avoid the harms, then we do in compliance with what Allah, Highly Exalted Be He, says:

WHEREFORE FEAR ALLAH AS MUCH AS YE ARE ABLE.

In case, however, that such acquisition and avoidance are unattainable, we avoid the harm if it is greated regardless of the benefit, and should not care for missing that benefit (28). In application of that principle, he says: (it is obligatory to cut the abdomen of a woman to bring out the baby whose life is hoped for, because maintaining life is a benefit greater than the harm of violating the inviolability of its mother) (29).

He looked upon the anticipated harm that is as probable as if it already happened. If occurrence of harm is overwhelmingly probable, even as a future possibility then it is considered as one that has already taken place (30).

On the basis of such principle, we see that it is impermissible for man to sell an organ of his body, the loss of which entails disability in the body, such as sale of an eye, for instance, to receive material gain, raise more money or promote a trade, or with a view to seeking fame or any other end. Neverthless, it is permissible to sell human organs if the purpose is to drive away a greater harm, in case a person, for instance, is in need of purchasing a kidney for himself or for a person dear to him, and he cannot find any other way except selling an organ of his whose loss does not entail perdition. Such act is permissible if the procurement of the kidney will save his life or his dear person from definite perdition.

In the same way, analogy can be drawn as regards the other organs in the body, and based on expert medical opinion.

This is in as far as the seller is concerned, whereas the purchaser is permitted to purchase human organs if he wants to use the purchased organ to save his own life or a dear person from perdition, total or partial, or if it were an institution established to collect organs for utilization when needed for the purpose already referred to, provided that such act is not taken as a means for material gain or profit or organs purchased to be later sold for profit. However, there is no objection to selling the purchased organ at cost price or below the costs.

(D) It is necessary to refer, in this context, to the fact that some human parts can be no means be sold when there is a specific provision

prohibiting their use, or due to their contradiction with another Sharia principle other than what has been mentioned, among these things:

Sale of human hair to join it to the hair of purchaser. It was mentioned that Asma', daughter of Abu-Bakr reported thaÅ a wgman came to the prophet and said:

> *"I have a newly wed daughter. She had an attack of small pox and thus her hair had fallen; should I add false hair to her head? He said: "Allah has cursed the woman who adds some false hair and the woman who asks for it".*

Most probably, the wisdom of prohibition is not as some Hanafite scholars view that it contradicts the honour and dignity bestowed upon man (32), but because it implies falsehood by adorning the person with things not in her, and this is prohibited. The prophet said:

> *"The one who makes a false statement of that which one has not been given is like one who wears a garment of falsehood" (34).*

Which means that the one who falsely boasts of what he does not have so as to show off and falsely adorn himself, is a person dispraised like the one who wears the garment of falsehood.

This meaning is corroborated by the authentic Hadith that the Messenger of Allah, may the blessings and peace of Allah be upon him, forbade that a woman joins things to her hair (35). This prohibition includes everything joined to a woman's hair, even if it were not human hair, so long as it makes her take an appearance that is not hers.

Sale of man's semen is similarly prohibited. It is indisputable that this is impermissible and invalid, because its use, after sale, for the purpose for which it has been created, namely reproduction, leads to mixing blood relationships which is indisputably impermissible.

Conclusion

In the light of this research, we come to the following conclusion:.

It is permissible to sell human organs when judged necessary under the following provisions:

1. The sale does not contradict human dignity, in the sense that the

purpose of sale is not profit, trade nor circulation.

2. The organ should be utilized for the function it was created for, or else the sale is impermissible.

3. The sale repels a harm greater than the loss of the organ.

4. The sale should not contradict a Sharia text (as in the case of "hair"), or any other Sharia principle (such as semen).

5. There is no available artificial substitute for the needed organ.

6. The sale and purchase should be made under the supervision of a reliable official specialized institution to verify that the aforementioned conditions are fulfilled.

Annotations

1. "Al Mughni" and "Al-Sharh AlKabeer" vol. 4, p. 2.
2. "Hashiat Ibn Abdeen", vol. 4, p. 5.
3. See, "Al-Madkhal ila Nazariyat Al Iltizam Alaama". Sheikh Moustafa Al-Zarka, vol. 2, p. 128 . 130, and 'Hashiat Ibn Abdeen', vol. 4, p. 5, 126.
4. "Badaai' Al-Sanaai' " by Al-Kassani, vol, 5, p. 143, and "Al-Mughni" and "Al-Sharh Al-Kabeer", vol. 4, p. 7.
5. "Al-Forouk Wa Tahzeeb Al-Forouk", vol. 3, pp. 238-239 and "Mawahib Al-Jaleel", by Al-Hattab, vol, 4, p, 236., and "Rawdat Al-Talibeen", vol. 3. pp. 348-350.
6. "Hashiat Qalyoubi Ali Al-Mahali", vol. 2. p. 157.
7. "Al Mughni" and "Al-Sharh Al-Kabeer", vol. 4, p. 7, "Al-Badaa' e", vol. 5, pp. 143-145.
8. "Al Forouk Wa Tahzeeb Al-Forouk", vol. 3, pp. 238, 239, and "Bedaiat Al Mojtahid", vol. 2, p. 136, and "Nail Al-Awtar", vol. 5, p. 257.
9. Ibid, "Al Badaa'e", vol. 5, p. 144, and "Zad Al Maarig" vol. 4, p. 473, and "Nail Al-Awtar", vol. 5, p. 237.
10. "Hashiat Ibn Abdeen", vol. 4, p. 162, and "Al-Sharh Al-Kabeer", vol. 4, p. 12, and "Mawsou'at Figh Omar", by Dr. Muhammad Rawwas Qalaji p. 131.
11. "Al-Forouk Wa Tahzeeb Al-Forouk", vol. 3 p. 237, and "Mawahib Al-Jaleel", vol. 4 p. 263
12. Narrated by Al-Bukhari "Fath Al-Bari", vol. 4 p. 417
13. Al-Isra', verse 70
14. "Al-Jamie li Ahkam Al Qur'an", Al Qortobi vol. 10, p. 294.
15. "Hashiat Ibn Abdeen", vol. 4, p. 162.
16. Ibid. vil. 4, p. 4.
17. "Al-Forouk", vol. 3, p. 237, and "Mawahib Al Jaleel", vol. 4, p. 263.
18. "Al-Mughni" and "Al Kabeer" vol. 4, p. 304.

19. "Fath Al Wahhab", vol. 2, p. 12, and "Fath Al Bari" vol. 4, p. 417.

20. "Al Hidaia" vol. 3, p. 34, "Badaa'e Al Sanaa'e". vol. 5, p. 138, 145, "Hashiat Ibn Abdeen" vol. 4, p. 162, and "Al Fatawi Al-Hindia" vol. 3, p. 115.

21. "Al Forouk" and "Tahzieb Al-Forouk" vol. 3, p. 240 241, "Mawahib Al Jaleel" vol. 4, p. 265, "Bediat Al-Mojtahid", vol. 2, p. 138, "Al Mughni", and "Al Sharh Al Kabeer", vol. 4, p. 10, 304 and "Rawdat Al Talibeen", vol. 3, p. 353.

22. "Al Mughni" and "Al Sharh Al Kabeer", vol. 4, p. 304. Muhammad Rasheed Reda commented on the last sentence of Ibn Qodama by saying:

    That is, it is permissible to sell it if benefit is derived from it, and this is the case in our age that parts of the skin are stripped off to patch up the body and other places). "Hamish Al Mughni and Al Sharh Al Kabeer", vol. 4, p. 304.

23. Quotation of this and detailed elaboration on its meaning will be found in Study IV, God willing.

24. See that meaning in "Hashiat Ibn Abdeen", vol. 4, p. 4. Closer to that meaning is what we conveyed quoting "Hashiat Qalyoubi" saying:

    (it is not hidden that the benefit of every thing depends on its nature, the benefit of a leech is sucking blood, the benefit of a nightingale is enjoying its voice, the benefit of a cat is trapping the mouse, and the benefit of the monkey is teaching...) see also "Zad Al Maad", vol. 4, p. 474.

25. "Zad Al Maad", vol. 4, p. 474.

26. "Badaa'e Al Sanaa'e", vol. 5, p. 138.

27. "Al Forouk Wa Tahzieb Al Forouk", vol. 3, p. 240.

28. "Qawaa'id Al-Ahkam", vol. 1, p. 98, see "Al-Manthour", by Al-Zarkashi, vol. 1, p.348.

29. Ibid, vol. 1, p. 102.

30. Ibid, vol. 1, 107.

31. Which means to "fall down".

32. Narrated by Muslim, see "Makhtasar Sahih Muslim", by Al-Hafiz

Al-Mondheri No. 1383.

33. "Al-Hidaia", vol. 3, p. 34 and "Badaa'e Al Sanaa'e, vol. 5, p. 138.

34. Narrated by Muslim, "Mokhtasar Sahih Muslim", by Al Hafiz Mondheri, No. 1387.

35. Narrated by Muslim, "Mokhtasar Sahih Muslim", No. 1384.

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SALE OF HUMAN ORGANS
IN
THE BALANCE OF LEGITIMACY

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General:

Transplantation surgery has so much advanced as to revive hopes in many patient in the procurement of human organs which they need to preserve their lives.

That the patient gets a needed human organ from a living donor, or after his death, is an incident that gives rise to a legal as well as a sharia transaction between patient and giver, the characterization of which must be defined.

Law No. 7 of 1983, on kidney transplant operations, has allowed donation of kidney by a living person, and stipulated some conditions so as not to cause detriment to the life and health of donor. The same law also allows bequeathing kidneys, and specified the necessary conditions. The Islamic sharia also allows donating or bequeathing any of the organs in man's body for saving the life of a patient.

Donation and bequest are not sufficient sources for procurement of human organ transplants, not due to incompatibility between the bodies of the donor or testator and the patient, but because people refrain to donate or bequeath organs because of social, ideological and cultural reasons.

In view of the insufficiency of donation and bequest, some of them specially the well-to-do, offer money to attract healthy people, persuade them to give organs of their bodies for material recompense. Such action is, in point of fact an act of sale.

Many people have been preoccupied with the question of selling human organs. Considering the patient's desire and hope in life and the giver's need for money, people have held different views as regards the

legitimacy or illegitimacy, the permissibility or imperimssibility in this respect.

It has been deemed appropriate to write on sale of human organs with a view to knowing the attitude of law and Islamic Sharia so that people are not confused.

In this research, we shall briefly tackle:

— Reasons behind resorting to purchase of human organs.

— Some social concept as regards sale of organs.

— Effects entailed by sale of human organs.

— Sale of organs between prohibition and permissibility.

— Is it legally permissible to sell human organs.

— Islamic Sharia and Sale of human organs.

First: Reasons Behind Resorting to Sale and Purchase Of Human Organs:

The pressing reason for purchase of a human organ is the dire need of patient for that organ to preserve his life. Donors and testators who give their organs within the limits permitted by law and the Islamic Sharia are quite few, the fact which constitutes another cause for resorting to purchase. Being a well-to-do person and availability of fianacial potentials also lead to purchasing, in addition to the dire need of healthy people for money and their expectations to be wealthy and, so, love of money is an encouraging factor to sell a human organ.

All such reasons are originally ascribed to the social concepts prevailing in our society, the firm belief by some that this action does not contradict law or Islamic Sharia, and to their belief that they do this for the sake of a lawful interest, the interest of seller and purchaser.

Second: Some Social Concepts As Regards Sale Of Human Organs:

In view of the newness and significance of the issue of selling human organs, it engaged the attention of those in the fields of medicine, religion and law.

The paucity of rulings in this field made those interested resort to independent reasoning and try to reach to discretionary opinions in the

light of their vantage point to life and its philosophy, or in the light of the benifits obtained or harms incurred because of sale of organs. It may be said that the patient's need for an organ from the body of another person is, in all cases, a dire necessity to save his life. There is nothing that lawfully or legally prevents patient to purchase such organ at the sum of money agreed upon between him and the other party.

Some scholars hold the view that there is no categorical evidence prohibiting sale of an organ from man's body. Opinions in this regard are merely individual. They are challenged by other counter opinions which adopt arguments and give proofs that make sale and purchase of organs impermissible.

Others see that the permissibility of sale of human organ rests upon to fact that the lawful blood money is the material recompense for man's body or life, that is man's body is at a valuation of the lawful blood money. By analogy, the price of the human organ is estimated in the light of the lawfully specified wergild. This opinion is counterpoised by the fact that the lawful blood money is not the price of a body, but a penalty imposed on the culprit who commits transgression upon the body or the life of another man. Some others also beleive that there is no need for sale or purchase of human organs, but that the patient can offer the giver a sum of money in the form of a present as a way of showing gratitude. Other people fear exaggeration in the given present that its value may be higher than the price estimated at sale, thus the reason for prohibiting sale is established.

Third: Effects Entailed By Sale Of Human Organs:

Positive laws have not permitted but prohibited sale of human organs. The Islamic Sharia does not approve it, but renders it impermissible. Among the problems ensuing from sale of organs, and which we look upon as the reason for impermissibility are the encouragement to sell organs of the human body for the sake of money, opening the door for outbids as regards prices, thus leading to exploitation of man by his fellow human being. Such matter also encourages sale for making wealth, if a man sells more than one organ in his body at great sums of money: in addition to the fact that such behaviour will under value man and depreciate the sublime standing and prestige bestowed upon him by Allah, Highly Exalted & Glorified Be He, Who has honoured him and placed him above all creatures.

Fourth: Sale Of Human Organs Between Prohibition And Permissibility:

The fundamental rule concerning sale of human organs is prohibition, because the civil code stipulates for the validity of a contract of sale that the subject of contract is lawful, which means that the human organ should be among the things included within the circle of dealings. It is legally stipulated also that the reason for contract should be lawful, not in contradiction with the provisions of Islamic Sharia, being a source of the civil code in Kuwait.

Nevertheless, such prohibition may have exceptions in certain cases in which sale of human organs is permissible. Such cases are called the cases of dire necessity. The principle of necessity is adopted both in positive laws and Islamic Sharia. "Necessity knows no law, and is estimated accordingly". Yet, in such case, a criterion determining necessity should be established for each case separately in the light of the mentioned juristic rule.

Necessity should be determined whether for patient or the sound person who gives his organ.

Conditions and controls should be made for such cases, in which sale of human organs is permissible, so that the door may not be wide open and sale of human organs becomes permitted without limits.

Fifth: Law & Sale of Human Organs:

1. The question raised: Is it legal to sell human ogans? To answer this question, we have to refer to the rules and provisions of the civil code as a contract of sale is one regulated by law. The Kuwaiti Civil Code does not explicitly stipulate the prohibition of selling human organs. However, in conformity with the general rules which govern the contract of sale, being a commutative contract, the Kuwaiti Civil Code stipulates, for the validity of such contract, that the subject and reason of contract are both lawful, and contraction is made for a lawful purpose. The subject of contract is the human organ, sale of which is unlawful because dealing in it is originally impermissible. Also the reason behind the unlawfulness of the contract of sale of human organs is that the seller receives a price against selling a human organ in his body, a matter contradicting the provisions of the Islamic Sharia which is one of the sources for civil legislation in Kuwait. If two persons enter into a contract to sell a human organ, then such contract

is, in this case, illegal; and the penalty ensuing is the absolute invalidity of the contract, which means that the contract is non-existent, whereas the effects contract is non-existent, whereas the effects entailed by such invalidity are represented in returning to the same position, as it was before, prior to the conclusion of the contract, in the sense that the seller is under the obligation to return the sum of money he received from the purchaser, and the purchaser is obliged to return the human organ he received from the seller. It is impossible for the purchaser to execute the obligation, then he is committed to pay a fair compensation.

2. Islamic Sharia may permit sale of a human organ in cases of dire necessity, in which both subject and the reason of contract are lawful, and the contract becomes valid, and produces entire effects binding to both parties.

3. Law No. 7 of 1983 on the operations of transplanting kidneys, allows donation and bequest of human organs from a dead body, on condition that the relatives of the dead, and provides for the necessary conditions. It also procuring human organs present at time of death, approve. This law does not discuss sale of organs neither showing permissibility, nor prohibition.

Some comparative laws regulating transfer and grafting of human organs have adopted a clear-cut and explicit course as regards sale of organs, and explicitly prohibited selling human organs and receiving any material return against sale, imposing due penalty of imprisonment and amercement on the violator.

Among such laws are the Jordanian, Iraqi and the Sudanese Laws. The Kuwaiti draft law on the transplantation of organs has also adopted same.

There are some other comparative laws which made it obligatory for the doctor who performs transplantation to refuse executing the operation, if he knows that the transplant organ was sold, otherwise, he will be subject to punishment, a matter also adopted by the Kuwaiti draft law on the transplantation of organs.

The Kuwaiti penal code has not included any text rendering impermissible selling of human organs. Consequently, no punishment is imposed against the one who sells or purchases a human organ for transplantation.

4. Difference Between Sale And Other Acts Of Donation:

A contract of sale is one of commutation. Among its characteristics is to receive a price against selling a certain thing. A contract of sale differs from other contracts of donation, such as donation, bequeathing and gratuities, in the sense that in such contracts a person offers a thing against which he does not receive something in return. The reason behind the impermissibility of selling human organs is that the person receives a material recompense against selling such organs. However, in case a person does not take a price, then his act is one of donation, which is lawfully permitted, as the reason and the purpose are here lawful, since they extend help to a patient to save his life against no return, and that is why positive laws, including the Kuwaiti Law, make donation and bequeathing of human organs, permissible though originally prohibiting sale.

If a person offers another a human organ against no material return, and the recipient wants to show gratitude to the giver by offering him a present, is this act considered sale or donation? In order to know this, we have to look for two matters; the first is the value of the pesent. We should valuate it in relation to the benefit derived from the human organ. If the two values are equal, or the value of the pesent is greater, then such act is called a sale, as the present is nothing but disguised act for sale.

The second matter is that we have to probe the intentions of the contracting parties. If the act is done in good faith for donation, then the contract implies a donation, irrespective of the value of the pesent.

Sixth: Islamic Sharia & Sale of Human Organs:

We have not found in the books of Jurisprudence a clear-cut opinion on the sale of human organs, in terms there are some discretionary views held by those who have interest in such a question. Some of question. Some of them support the impermissibility of selling human organs on the basis that man's body is owned only by Allah, and that man is not permitted to dispose of his body, in conformity with the known Juristic rule: "He who does not have can not give".

Some believed that disposal of body organs through sale is possible, by way of analogy with sale of woman's milk and of blood. Others reject this view as such analogy implies great difference, because woman's milk and blood do not decrease nor impede the bodily functions as, by nature, they are renewed in the body and the sold quantity can be replenished. We have to notice that if the quantity of sold blood goes beyond the limits

which inflicts harm upon the body, then sale becomes impermissible, as harm is established.

The opinion of the Ad Hoc Administration of the Ministry of Waqfs and Islamic Affairs categorically resolved the dispute, and passed the fatwa No. 455/85 on sale of human organs

It reads: (As for the patient's purchase of a kidney from another person, the rule is that such act is impermissible, because Allah has honoured man, so it is not permitted to cut some of his organs and sell them at any price, whatsoever, but if the patient does not find a donor to give him his kidney, and his life is endangered, while he cannot find any other means to cure his illness, then purchase of organs is permissible, because the patient, then, is driven by a dire necessity. Allah, highly, exalted be He, says:

> *WHILE HE HATH SURELY DETAILED UNTO YOU THAT WHICH HE HATH FORBIDDEN YOU, UNLESS YE ARE DRIVEN THERETO.*

That is without prejudice to the conditions already referred to in the case of donation, that taking the organ does not lead to the death or disability of donor, and that donation should be made with donor's full consent, also that he should be an adult and of age, and also that safety is the greater probability after removal of organ. Whereas the one who donates money to the person, whose life is threatened by death, and who wants to purchase a kidney to preserve this person's life who is in need of financial help, the committee holds the view that financial donation is permissible, and the one who gives him help shall be rewarded and, Allah does not waste away the reward of the beneficent ...Allah is the Omniscient.

Reviewing this opinion it is evident that the rule in the Islamic Sharia is impermissibility of selling or purchasing human organs, on the basis of the provisions of the Munificient Qur'an which provides for honouring man, and urges people not to impair such honouring. In conformity with the objective of realizing the interests of people, preserving their lives and protecting them against perdition, the Islamic Sharia has allowed sale of human organs only in cass of necessity, and has stipulated some conditions to determine the criterion of necessity, since necessity is estimated according to the pressure it exercises. The following conditions are derived from this juristic opinion for the permissibility of sale or purchase:

1. If patient does not find a donor to give him the needed organ.

2. If there is a danger imperilling life of patient.

3. If patient does not find any other means to cure the illness.

This lawful opinion has gone further, to the extent of allowing any one to donate money for the patient whose life is threatened by death, and who is in need of purchasing a human organ to preserve his life, if the patient is in need of financial help to purchase the needed organ.

Conclusion

This research has briefly tackled some of social, legal and religious aspects as regards sale of human organs, and the extent of legitimacy. In this research, we come to the conclusion that the rule is illegitimacy of sale, on the grounds of prohibition by Islamic Sharia. The exception to this rule is permissibility of sale, only in cases of dire necessity. Such necessity has been determined, in the first place, by patient's need for the human organ to save his life, and being compelled to purchase it. Consequently, a contract of sale is also legally permissible in dire necessity, provided that the conditions, set forth in the mentioned lawful Opinion in this research, should be fulfilled due to the fact that the Islamic Sharia is a source of the Kuwaiti Civil Code.

DISCUSSION
TRANSPLANTATION & SALE OF ORGANS



DISCUSSION

Chairman, Dr. Essam Al-Sherbini

We now tackle the topic of organ transplantation, which has become a practical programme undertaken by Kuwait and many other countries of the Islamic World. Along with this scientific actrivity, new Juristic issues arise besides the medical. It is apparent that the organs which could possibly be procured for transplantation to patients are short of the demand. The patient is willing to pay all the money he can afford for a remedy. Hence, arises the question of sale of organs. Is it permissible for man to sell part of his body? Is it also permissible to sell part of a dead man, as transplant organs are procured from the healthy and the dead alike? If a patient in need is permitted to purchase an organ, or pay an idemnity, in any form whatsoever, is it permissible for the sound living person, who is not compelled by a dire necessity, to sell an organ of his body?

It is well known that a former formal legal opinion (Fatwa) was released to the effect of the permissibility that a living man donates an organ of his to save the life of a patient. However, those who released this fatwa did not permit the sale of organs. Jurists talked before about milk and blood, but the case is different because milk and blood are renewable, and the danger entailed in obtaining them from a living person hardly exists, whereas procurement of an organ implies the separation of a living organ through a surgical operation which involves certain risks.

If sale of organs is permitted, is any man entitled to purchase and sell them? and what if a third party is involved to organize the process? What will the case be if this becomes a trade. I believe many of the fellow members did not miss what Kuwaiti Television showed, a short time ago, of a story close to science fiction or criminal imagination, or perhaps from the exploitation on the part of some people who harp on the need of patients and doctors for organs, which was turned into a trade in which people are exploited or assaulted. Should the state interfere to organize this, in the sense that it becomes the responsibility of states to directly purchase and sell organs?

All such questions have been raised, not because they involve science fiction, but because they reflect a living reality; if not in our country nowadays, yet, in surrounding countries, and will come to us...

Our first speaker on this topic is Dr. Mokhtar Al-Mahdi, who will talk about Donation, Sale and Unbequeathed Human Organs... I kindly request the fellow speakers and those who will raise questions and discussion to stick to talking on the subject of the session, which is sale or organs, because we had previously tackled death and what happens after the death of the brain or the heart. We have also previously tackled some other aspects, but we hope now to focus on the question under discussion.

Chairman, Dr. Essam Al-Sherbini

I extend thanks to His Eminence, Dr. Muhammad Sayed Tantawi for delivering a good speech, and also for his good commitment to the element of time. The session will be adjourned at six O'clock, because from 6:00 until 6:30 there is the Maghrib prayer. The next session will be on the same topic after prayers, with ampler time, and a better Chairman... We now open the discussion...

Those who want to speak are kindly requested to send their names...

I believe that the session has covered both medical and Juristic issues, and the two speakers are a doctor and a Jurist. The following session is considered a continuation to this. You are free to ask any questions. The genetlemen participating in this session are kindly requested to confine discussion to the subject, which is the transfer, sale and donation of organs.

Dr. Abdulrazzaq Al-Samera'i

I'll speak about corneal transplant. Cornea is brought to some Arab States from other countries such as Sri Lanka, but more often cornea is imported in a bad condition taken from aged people whose corneal layers, in part, have lost vitality such as the endothelial layer. Some people travel abroad to have a cornea transplant, the matter which costs great sums of money for the individual and the state as well. We perform this operation in Kuwait with perfect success. However, cornea is not domestically available.

Donation or sale of cornea is not made possible through a living person, but soon after death, and the operation usually achieves perfect

success. There are no cornea donors after death in this country, or other states. Neither a law nor a legislation exists to allow doctors to obtain cornea from dead persons, or at least from those who do not have relatives here, or to obtain cornea from those who die in road accidents. On the basis of the rule mentioned by his Eminence, Dr. Muhammad Sayed Tantawi that "the most harmful determent is removable by the less harmful one"., which also means reviving and offering life to a patient of cornea opacity who suffers severe poor sight by providing him with a cornea transplant and giving him light again, thus reviving him, we raise the question: "Is there a legislation allowing doctors to obtain cornea from dead persons?" Thank you.

Dr. Haitham Al Khayyat

I have a simple remark on the conclusion of the research presented by Dr. Muhammad Sayed Tantawi. Man's sale of any organ of his body is lawfully impermissible and absolutely rejected unless in the rarest cases which I believe His Eminence meant to say that purchase is permissible in rare forms but sale is originally not. I do not know, have I understood right?

Dr. Muhammad Sayed Tantawi

I mean sale and purchase, I mean both, because in this case of the rarest form which I mentioned, when the life of a man is contingent upon this while there is no relative nor any one else to donate an organ to save his life, in this rare case, it is permissible to purchase from any person to save the life of this man... So, I mean both aspects...

His Eminence Sheikh Ezzuddeen Al Khateeb

I mean to raise an actually explanatory question. When it is said that man is owned by Allah, what does the word "owned" mean? I believe that everything is owned by Allah, who hath the Dominion:

> *BLEST BE HE WHO HATH REVEALED THE CRITERION UNTO HIS BONDMAN THAT HE MAY BE UNTO THE WORLDS A WARNER. HE WHOSE IS THE DOMINION OF THE HEAVENS AND THE EARTH.*

Everything in the universe including man is owned by Allah. So, what is the relationship between the fact that man is owned by Allah and the impermissibility of selling any of his organs, this is on the one hand; Does absolute ownership, on the other hand, mean the ownership of sale and purchase, in the sense that since I own a thing, I can exercise authority by

sale and purchase. Is this meant in the Qur'anic verses and prophetic traditions? I seek the opinion of his Eminence, the Mufti that it is impermissible to sell organs on the basis of commercial transactions, as Allah has honoured man on the grounds of honouring, but not on the grounds of being owned or not. The question of donation has also been admitted by many muslim scholars. I support his Eminence, the Mufti in this vantagepoint. There is a thought which has occurred now to me, and which can open new horizons for the Jurists of standing attending this session, when the Creator describes the believers, praising them with giving priority over themselves, even in destitution''. The Islamic history cities the example of the three men who were fighting in a battle. Each of them was in dire need for a sip of water. The first man preferred his brother to himself and the second preferred the third to himself. When the cup-bearer returned to the first man he found him dead, and also were the second and the third. This example implies that Allah has given man the right to put others first, not on the basis of being the owner.

Chairman, Dr. Essam Al-Sherbini

Thank you, your Eminence the Muftii.

If you allow me to take half a minute, the Prophet, may the blessings and peace of Allah be upon him, commanded man not to leave the place of plague, a matter of perdition, in order to save the entire nation, and also commanded man to fight and die to save the nation. This command should be taken into account. There is a comment by Dr. Yehia Nasser Khawaja outstanding from the last session. I kindly call upon him to give it briefly.

Dr. Yehia Nasser Khawaja

Dr. Muhammad Tantawi has kindly delivered an interesting speech covering all the points which I intended to talk about. But I have some points concerning the procurement of organs from the dead. It is well known in the Hanbalite school that such procurement is impermissible as the prophet says,

> *''Breaking the bone of the dead is tantamount to breaking the bone of the living'',*

and that the organs of man are respected, inviolable. As to the purchase of kidneys, the Sheikh has said that it is possible, in case of necessity, to purchase a kidney. The one who sells his kidney should not be harmed, and there is the benefit for the recipient who suffers kidney failure. But the

seller may suffer harm, because he undergoes a surgical operation, and the other kidney may not be good for long. So, there is a potential harm. I kindly ask the Sheikh to elaborate on this point.

The second point is that the Gulf area, at the time being, turns to India to purchase kidneys tempting people with dollars. Then, it goes around that he who wants a kidney must pay a thousand or two thousands and even fifty thousand Dollars. The important fact is that there are people who want to support the hungry.

Should this opportunity be seized. Will there not be any harm inflicted upon the others. As to the procurement of kidney from those sentenced to death as long as man is still alive, so the inviolability of his organs still exists, and should not be overlooked for any reason whatsoever. Naturally, I do not believe that the Sheikh agrees on this point that what we procure from even those sentenced to death is not based on benefit, but kidney donation by a father or a son to a father or a mother is not impermissible as viewed by muslim scholars. The problem, however, lies in the question "Is there any harm, if we open the door of kidney purchase to the person selling his kidney?

Chairman, Dr. Essam Al-Sherbini

Thank you, Dr. Yehia... Now is the turn of Tawfiq...

Dr. Tawfiq Al-Wa'i

I would like to raise a simple question. Dr. Muhammad Sayed Tantawi has actually delivered his word, but left the point of sale to the extremely special cases. There are, however, some priorities, in the sense that we get organs from the dead, if this is not possible, and he said he believed so, we get the organ with a permission, and in case we do not find the dead people, we resort to donors, but in case we do not find donors, we recourse to purchasing. But turning absolutely to purchasing while disregarding the two former questions: I hold the view that we resort to the purchase of organs when donation or procurement from the dead are not possible, or when no donors nor dead people are available. We resort to purchasing in the extremely special cases as kindly elaborated by his Eminence. I do not think purchase, should be permitted as a first step...

Chairman, Dr. Essam Al-Sherbini

Dr. Adel Al Tawheed, is kindly asked to speak to be followed by Dr.

Abdullah Basalamah.

Dr. Adel Al Tawheed

I am pleased to listen to the views of the Jurists as regards this practical and scientific issue. Yet, the concept of donation in self-denial is not a practical matter. Who would donate a kidney on the basis of such principle? In fact, the Transplant Department in Kuwait has not reported such a matter that a person goes, of his own accord, while being no blood relative, to register his name and donate a kidney in self-denial. I remember a single case in this regard. There is the patients' Aid Fund to help patients in this respect. This Fund is one of the charity institutions which seek to help people travel abroad for treatment after the Transplant Department in Kuwait has registered growing numbers of patients who need kidney transplant and find no donors. People seek the Patients Aid Fund, in collaboration with the Alms House in an endeavour to be sent to India or other quarters. naturally, the Fund was helpless in this question because such cases are intricate, and need many formal legal opinions for final decision. What currently happens is that the waiting list grows day by day, following up renal deficiency and its problems such as headache arthritis shunt thrombosis, renal dialysis and the waste of time for the patient. It is not possible for a kidney failure patient to travel while on dialysis, besides, the expenses outside Kuwait are naturally great. So we have imposed confinement on such a patient inside Kuwait. In fact, we have two school inside Kuwait. The Transplant Department rejects sale of organs. On the other hand, the Haemodialysis Department does not object as long as sale intends to alleviate the anguish of that patient. In fact, we have collected in the Patients Aid Fund all the formal legal opinions in this regard. We have also contacted the Opinion Ad Hoc Administration in the Ministry of Waqfs and Islamic Affairs. The Opinion Ad Hoc Administration in Kuwait permitted the sale of organs. Opinion Number 55, of 1985 A.D. as follows:

As to kidney purchase by a patient from another person this is forbidden, as Allah has honoured man, so it is impermissible to cut or sell any of his organs at any price, whatsoever. In case the patient does not find a kidney donor, and his life is endangered, while no other means is available to cure his disease, then purchase is permissible as he is compelled by a necessity. Allah, highly exalted be He says:

WHILE HE HATH SURELY DETAILED UNTO YOU THAT WHICH HE HATH FORBIDDEN TO YOU, UNLESS YE ARE DRIVEN THERETO.

We have to take into account the conditions in case of donation, that the procurement of any organ does not conduce to death, nor injury of donor, that the procurement is implemented with his complete consent, and that donor should be of full legal age. Naturally, in this Opinion, there is a later addition. Nevertheless, it has been said about rendering help to the recipient that if such help conduces to a forbidden thing, then it is forbidden. It is impermissible to transfer a kidney to a person whom we think will use it in forbidden action. As regards the spread of the concept of sale of kidneys nowadays, the kidney is purchased from abroad, as mentioned in Helsinki Paper, submitted by Saudi doctors in Helsinki Conference in 1986. The Paper demonstrates the dangers and complications ensuing from kidney transplant, and purchase from places lacking accuracy and precision. The paper also indicates some dangers, that 40% of such patients have performed nephrectomy operations again after they had purchased the kidneys from abroad, in addition to the complications in such cases. Here we have an answer by Dr. Youssef Sadik of Sharia College. He says that the sale of any organ is naturally impermissible, because we may give such organ which praises the glory of Allah, highly exalted be He, to an infidel whom originally we have to eradicate and not help giving him life.

I want really to come to a question and raise, God willing, a topic for discussion. First, until we get rid of this critical situation which we are facing having growing numbers of donors, along with people's discomfort with this, there is not, in fact, a single donor of his own accord, which means that we see people call for voluntary donation, yet it takes many years, although it entails no harm for. However, people may call for kidney donation on the basis of good reward, not on the grounds of sale and purchase. This matter means that you give the donor a present, as you give in blood donation, but not on the basis of sale so that we can facilitate this way for people, and donation can be from a Muslim to a Muslim, from a non-Muslim to a Muslim and from a Muslim to a non-Muslim, and that if such donation occurs in Kuwait it should be implemented in a Kuwaiti Centre considering the fact that in such a place we take all the scientific precautions, and that the kidney which cannot be transported to Kuwait should be sent to another Islamic Centre in the Islamic world, but not abroad.

Chairman, Dr. Essam Al-Sherbini

...Thank you Dr. Adel. In fact, there are many questions, and the

session will be extended, God willing. Now is the turn of Dr. Abdullah Basalmah. I wish if you answer two points, the first is: "Does he feel as a doctor that he infringes upon the inviolability of the dead when be gets an organ from him to be transferred to a living man?

This question will be directed to the fellow Jurists. The second question is raised by Dr. Yehia Nasser Khawaja as follows: "Is the harm inflicted upon the kidney donor gravely actual or slightly potential?...

Dr. Abdullah Basalamah

You shoulder me with the responsibility of giving opinion, and Dr. Hussain Al Jazaeri made it impermissible.

Chairman, Dr. Essam Al-Sherbini

I mean your medical feeling. Do you feel while taking an organ from a dead man that you are infringing upon his inviolability, or that there is respect for that dead man, and respect for an organ which is of benefit after man's death?

Dr. Abdullah Basalamah

Allow me to anser the question of the dangers stated in cases of donation, purchase or transplant of organs by posing another question. Man cannot dispose of things he does not own. Man's body is owned by Allah. The organs of the body are also owned by Allah. However, don't we transplant a part owned by Allah to another part also owned by Allah.

In this context, the matter may look greatly different when we take a kidney from the body of an infidel to the body of a Muslim praising, exalting and praying Allah, we may contribute to the salvation of a man from fire, God willing.

Dr. Muhammad Sayed Tantawi

Allow me to elaborate a point, which I said, that man's body is owned by Allah. I want only to explain that brother Mr. Ezzuddeen, and also our colleague the doctor have both raised a relevant question. I mean that man's body is owned by Allah, and that everything is owned by Allah as correctly said by brother Ezzuddeen Al Khateeb, whereas man, besides being owned by Allah, man is responsible for it.

There is a difference between two sorts of ownership.

Man's body is owned by Allah, and man's soul is also owned by Allah, in the sense that Allah created man and entrusted him with his body and commanded that he should not use his body except in what is good. Allah made All things: earth, stars, sun, moon etc under the disposal of man and at his service. Allah in reality is the owner of everything. Whereas man, by virtue of viceroyship, is the owner of things other than "man". There is no contradiction between the two opinions.

Chairman, Essam El-Sherbini

Thank you Dr. Muhammad Sayed Tantawi. Now is the turn of Sheikh Muhammad Al Mokhtar.

Sheikh Muhammad Al-Mokhtar Al Salami

The question of organ transplant is based on either donation or sale. This question is a new one, regarding which we have no opinion by Jurists. Since we lack the discretionary opinions deduced from available texts, we have to follow the same track adopted by our Jurists. Before we come back to the general rules, we say that among the original rules is that the most general fact governs the most particular one, with no substantial harm to be inflicted. Similar rules do not provide Jurisprudence as they were laid down later. They are deduced from Jurisprudence, but their deduction occurs not through full but rather frequent detection.

This is then, a new question. What I have found from the past is an occurrence during and after the era of the Messenger of Allah, may the blessings and peace of Allah be upon him, that a man was hiring a wet nurse to breast-feed his baby. She was assuming two functions at one and the same time, as she was giving the baby her milk and raising him.

In this regard, I say that Jurists disagreed upon the question: "Is she paid for only nursing the baby"? and that it is impermissible to sell milk. This opinion has its own inviolability and respect.

The second opinion is that her wage is divided between the price of milk she offers and the charges for nursing and raising the baby.

I believe, then, that the forerunners' will be our approach towards such or similar questions. Regarding the question of Allah's ownership and its meaning, I think the one who talked about this question is Imam Al-Qarafi who mentioned that rights are of three kinds:

A right exclusively for Allah, a right for Allah and for the bondman – the bondman's weighs more –, and a right for Allah and the bondman where the right of Allah is given precedence.

When Imam Al Qarafi wanted to make clear the exclusive right of Allah, he found only one aspect which is to worship Him and not to associate a partner with Him. This aspect was discussed by Ibn Al-Shat. We are not interested in this point, we are not in a class. What is important in my opinion is whether organs, man or life are an exclusive right of Allah and the bondman, and does the bondman have a part in this right? I believe that life is a right of Allah, and not of man:

WHO HATH CREATED DEATH AND LIFE THAT HE MIGHT PROVE TO YOU, AS TO WHICH OF YOU IS EXCELLENT IN WORK.

A short while ago I said that for the question of organ transplant, we come back first to breast-feeding. Breast-feeding generates the question of blood and blood donation or sale. Anyhow, on the basis of what Jurists said as regards breast-feeding, they have recently disagreed concerning the permissibility or impermissibility of blood sale. Muslims of the East and West have currently approved the permissibility of blood sale. This approval comes in response to what the medical reality and progress have imposed, that surgeons cannot perform complicated or simple operations unless when blood is available and unless they feel assured that blood is present in advance, or otherwise, embarking upon a surgical operaton will expose the patient's life to death. There is also another question, close to this one, represented in preserving human life by eating from a human body. Is man allowed to eat part of his body. Is man permitted to eat the dead person to keep his own life, as Allah, highly exalted be He says:

BUT WHOSOEVER IS DRIVEN BY NECESSITY, NEITHER ALLUDING NOR TRANSGRESSING...

In this point we find that Jurists also disagreed. The question which took place in Lebanon or rather the Opinion released in this regard, it is political, and its approval is not suitable. However, it is an opinion of Juristic origin. Many Jurists hold the view that it is permissible for man to eat the dead to keep his own life.

The third point which I put forward in this subject is that in the Sharia interests keeping life comes second in rank, whereas safeguarding religion is of paramount importance. Man sells himself to Allah and dies for the sake of spreading religion, and offering freedom to mankind to worship Allah. This point is indisputably accepted. Then comes keeping life in the

second place. Keeping life is the basis. We have a certain life and another doubtful one. Man may reach the stage that if he does not benefit from another person's organ, he would certainly die. In this case, we cannot seek benefit on the basis of supposition, but on categorical grounds in the way viewed by the doctors, that is if doctors submit a report that the patient will certainly die if he does not receive an organ either through donation, or purchase. This is the first case. The second is the procurement does not involve what the Prophet said:

> *"Breaking the bone of the dead is tantamount to breaking the bone of the living"*

If the Hadith means to honour the dead after death, and that breaking up of his bones is an insult to him as the prophet forbade Muslims to sit on graves and walk in graveyards. But, in general, if it is to avoid insulting the dead, if this is the reason, I believe that the procurement of bones or parts of man after making sure that he is actually dead, even if blood still automatically runs, is meant to keep life on the basis of what I said about the permissibility of eating part of the dead man to keep the life of another living person.

As far as the legal consequence of purchase and sale is concerned, the basic fact is that sale and purchase are concomitant. However, I pause here to raise the question that the one who pays money is compelled by necessity, whereas the one who receives money is not forced to do so. Hence, we have to decisively say that the ruling on sale is not the same as that purchase. The one who purchases an organ is driven by dire necessity to preserve his life by money. On the other hand, the person who receives money by selling a part of his body, like a kidney or any part, I believe that it is impermissible for him to do so, as this reflects a degradation of human soul and destruction of Islamic fabric. When Allah prohibits usury, we ask ourselves why? I say because usury makes man interior to money, in I the sence that the usurer takes profit whatever the situation is, whereas man's efforts may receive profit or loss. I say that any structure which puts man in secondary rank after money is not approved by Islam because such a matter contradicts the honouring of man. From this point I say, I pause here to emphasize that it is necessary to differentiate in ruling between the one who sells and the one who purchases, as explained by my colloeague, Sheikh Muhammad Sayed Tantawi. I pause in a question and kindly ask kim to explain to me what is stated on page ( ) consequently, the verifying Jurists agreed that it is impermissible for man to sell an organ of his, as clear on page ( ). They

have also agreed on the sale and purchase of man or any of his organs, page (   ). Some Muslim scholars incline to allow a payment of indemnity for a person in case the patient does not undergo an organ transplant. Does the patient stand the situation without such transplant? Is there any great harm inflicted upon him, while no donors of blood relation or others are available? In fact, combining all the texts together... I pause here...may be some words are missing... or may be I misunderstand the point.

Any how, I hope his Eminence will kindly be given the floor to clarify the right opinion. Dr. Al-Samara'i has kindly spoken of cornea transplantation. We have clearly talked about the point of keeping life for the living whereas the person who does not find a cornea leads his life. This is another opinion. I hold the view that the question is not relevant. I conclude by a single recommendation that this question is one of gravity. I pray Allah that our efforts will hopefully be met with sucess. I also pray Allah to guide us in this regard. I request this question be referred to the Academy of Islamic Jurisprudence, for more profound consideration to provide us with more aspects of it and to give an Opinion for the Pan-Islamic World. We kindly call upon Muslim scholars to prepare the Islamic mentality, the mentality of Muslims to accepting the Opinion to be released in this regard.

Chairman, Dr. Essam El-Sherbini

Thank you, your Eminence Sheik Mokhtar. We have few minutes before Maghrib prayers, and on the list, there are four speakers: the first Dr. Ibrahim Al-Sayyad, and then Dr. Hassan Hathout, Dr. Al-Shazli and finally Dr. Al-Ashqar.

Now is the turn of Dr. Al Sayyad.

Dr. Ibrahim Al-Sayyad

If man's body is owned by Allah as we agree, than sale and purchase have some reservations. As Sheikh Al-Salami mentioned, there is no difference between the body of a Muslim and non-Muslim. When the Messenger of Allah, stood up in honour of a dead man's funeral procession, they said it was the coffin of a jew, he said:

"Isn't it a living being (soul)".

Therefore, I cannot deem it permissible to purchase from a living Indian or Sikh a kidney hundred or thousand dollars, because the principle of purchasing a human part is originally rejected.

It is exactly like the case of usury. Second comes the exaggeration in dealin with the corpses of the dead. Breaking the bones of the dead is exactly tantamount to breaking the bone of the living. There was a case of dead person in the area of the Messenger of Allah, may the blessings and peace of Allah be upon him, whose body was clearly showing what we call scientific stiffening, when all of the muscles of the dead stiffened after death, and his hands stretched aside. The people wanted to break them up to facilitate burial. The Messenger of Allah, may the blessings and peace of Allah be upon him, did not support the idea and ordered them to leave the hands stretched aside until they disintegrate and bend afterwards, that is what is actually stated in the Hadith, which I want to convey to those responsible fo Sharia Opinion in four Arab Countries.

But now there are three options, the first is purchase, from a seller. Purchase and sale of human body are not permissible because the body is owned by Allah. There, we exclude the first option. The second option is donation which is not void of harm whether little or great. Then remains the third option which is the procurement of organs from the dead. You have tackled this point and delivered relevant opinions in great diffidence and extreme caution, to seek the permission of the dead person's relatives, though you have approved that the owner of the body is only Allah. How could you approve that the one who owns the body and the soul is Allah, highly exalted be He, and then you argue,afterwards, that it is necessary to seek the permission of the deceased's relatives. Some Islamic states approve the procurement of organs from the dead for the benefit of the living without seeking the permission of relatives. On the other hand, other states, including Kuwait, stipulate the condition of seeking permission. Why should we put the condition that the dead's relatives should approve the procurement of organs after his death.We want you to give a brave Opinion that the life of a living man is dearer than keeping the cropse of the dead, to procure its organs seeking no permission from relatives, without any decision of a will, to give such organs to those whose lives are in dire need to be saved:

> *AND WHOSOEVER BRINGETH LIFE TO ONE IT SHALL BE AS THOUGH HE HAD BROUGHT LIFE TO ALL MANKIND.*

Chairman

Thank you Dr. Ibrahim. I agree that high voices do not change the opinions of Jurists... Yes, Dr. Hathout.

Sheikh Muhammad Mokhtar Al-Salami

Dr. Al-Sayyad has tried to corner us, but I do not believe that he can do so. In fact, we have never said before nor released any Opinion that it is possible to seek in advance the permission of the deceased's relatives...

Dr. Hassan Hathout

The need for an organ to save a life is similar to inanition. Saving the life of a needy man is bringing life to a soul and whosoever brings life to one it shall be as though he had brought life to all mankind. Let us set aside the concept of inanition through mutual responsibility, toleration and mercifulness among people. If man does not guarantee donation, he should seek sale, because the impermissibility of sale is greatly lesser than that of killing a soul. If we need to purchase an organ, this kind of treatment will be only available to the rich. The rich people will push the poor in purchasing organs which are little in number and below the demand. There will than be a sort of injuctice, like going to a country where there is a housing crisis. The rich will afford purchasing a house, whereas the poor cannot. We now proceed to the field of medicine. It is adviseable to nationalize this type of services to be directed through the govenment, so as not to have free markets in this respect. As regards what has been said about the taking of a kidney from a Christian to a Muslim, and from a Muslim to a Christian, in fact I quite disagree. There is a sort of common mercifulness among all mankind, with no discrimination in that which s good. The so called infidels taught us the Transplantation of kidney. It is they who also taught us how to perform operations. The chief of kidney transplatation is Christian. I would like to see common mercifulness on the basis of reciprocity: they give and we give; if they take what they need from us, and we take what we need from them, that is the way of life. I do not like such misconceptions that this Muslim can get but this Christian is cheap. I say this because the souls to Allah are all souls, I believe that in Allah's sight they are all equal.

Chairman

Thank you Dr. Hassan. Now is the turn of Dr. Al-Shazli.

Dr. Hassan Al-Shazli

In fact, I had some remarks which were explained by brother, Dr. Mokhtar Al Mahdi as regards the process of replacement in par of the

human self. Man's parts are considered to be owned by him, and that taking the bloodmoney is also considered to be the price of that organ. We may make clear this point by saying that the mandatory punishment against cutting an organ is first retaliation and not bloodmoney. We proceed from retaliation to bloodmoney if retaliation is hard to implement. Bloodmoney is considered also as a punishment but not a price, even if we agree that punishment is mandatory along with this. In this contecxt, then, we are discussing punishments, and not prices for such errors. Therefore, I think we must reconsider anything built on this. This is the first point.

The second point is, in fact, the point of Allah's ownership of all things in the universe. This point was elaborated by his Eminence, Dr. Tantawi, that all things in the universe are owned by Allah. Nevertheless, Allah, highly exalted and glorified be He made all things other than man at man's disposal, and made man live on all things other than man. Therefore, all things other than man can possibly be a commodity and estate. In defining "property" for which sacrifice, withholding and giving are involved, they said it is a thing other than man created for the interests of man. So, they have restricted its first position that all such things are created for the interests of man, provided that they are not of man, provided that they are not of man: because all such things are considered "estate", things to which man inclines, feels permissible and takes as possession and in return of which he may take something. Hence, we can understand the difference between Allah's ownership and man's ownership. There is no contradiction as man is owned by Allah and is still not subject to sacrifice, withholding, offering and disposal, as has been explained by our colleagues.

The third point... if we agree that man is owned by Allah and is not owned by man "himself". Man is not owned by himself. We have, then, to approve this rule, even with the case of donation, because donation is only effected in things owned by man.

Donation means giving what you possess. If you do not possess something, then donating it is null and void. What goes in the question of donation also applies in the case of purchase.

The fourth point... some people have mentioned that donation may occur in the way of giving precedence to someone over oneself by giving to others what one personally needs. In our opinion, altruism applies only to permissible things, but no self-denial applies to the impermissible. Man does not prefer others to himself in an impermissible thing, but in what is

permissible.

Therefore, the question of self-denial is also closed. Then comes the prohibition of evasive legal devices.

We have seen with our own eyes that our young people in need of money have secretly and away from their families presented themselves as blood donors and registered their names and blood group undergoing all necessary analyses until a purchaser comes.

Moreover, we read in the papers that some states purchases children to use them for organ transplant. I agree with brother Al Salami in what he says. We should start solving this issue here so that we may not be trapped in an evil the consequence of which cannot be curbed.

Chairman of the Session

Thank you Dr. Al-Shazli..Prof. Dr. Al Ashqar wished to postpone his turn to the next session. Therefore, I thank you all. Let's go now to prayers, May Allah have mercy upon you.

Chairman Sheikh Abdulmonem Al Zain Al Nahhas

We resume now. Dr. Fawzi Faidullah is kindly requested to take the floor.

The Research by Dr. Fawzi Faidullah

(Research Section, page No. 306).

Chairman Sheikh Abdulmonem Al-Zain Al Nahhas

Thank you Dr. Fawzi... Now is the time for Dr. Muhammad Naem Yasseen. The Research by Dr. Muhammad Naem Yasseen.
(Research Section, page No. 321).

Chairman Sheikh Abdulmonem Al Zain Al-Nahhas

Thank you Dr. Naem Yasseen. We have a third research, but counsellor Yehia Abulfetouh is not present. We can seize the opportunity and open the discussion started in the first. We start with Dr. Muhammad Al Ashqar...

Dr Muhammad Al Ashqar

The Opinion that each organ has a price, is very dangerous. This symposium will make those who released this grave opinion reconsider what they said. Man is of a higher standing. Reward does not mean a price. This price means something different other than the reward. This fact is well known in Islamic Jurisprudence in so many aspects. Indemnity of an organ is not a price for it, or otherwise the indemnity of blood-money will be the indemnity of the whole soul to be received by the inheritors. This means that the inheritors received the price of their heritable. It even means that the payment of bloodmoney supposedly implies that the one who pays indemnity is entitled to take.. dispose of or sell the corpse as he wishes. The matter which we will review now is the sale of a human organ and the involved evils which we listened to in the speech of Dr. Mokhtar Al-Mahdi that the US has banned such sale, and many European states have passed a resolution banning sale due to its extremely grave evils which they could not curb to the extent that they are very strict with donors to make sure that no secret sale is concluded. I hold the view that the concept that man is owned by Allah does not mean it is merely a question of formality. It is indisputable that man is owned by Allah and not by himself. This means also that he is absolutely not entitled to take the price of his self, and this is what I meant when I say that man is owned by Allah and not himself. I do not own my hand, nor my head, nor my leg. I am not the one who created them. From where did I take them? and from where did I obtain them. Allah has placed them under my administration. The legal guardian does not own the one over whom he exercises guardianship. If I have a little child I do not own him nor can dispose of him as I am not his creator, nor provider.

As far as donation is concerned, the dear fellows have, in fact, established a link between donation and a gift, and since gift implies ownership and sale also implies ownership, then the one who permits gift should also permit sale, and the one who prohibits gift should also prohibit sale as both belong to the same category. This opinion is really sound, and the established link is right. I agree with such fellows. However, does man's donation of any of his organs imply, in fact, ownership? I cannot say that it is the ownership of the organ which man donates. I raise the question, and do not know whether the remaining dear Jurists would agree with me on it as permissible. I have a right in an organ to safeguard it against aggression by anyone.

But if I lift up my authority over this organ for donation after death or in

life, and cancelled my competence regarding this organ, in this case I do not gift nor sell. There is not, in fact, a donation that means a gift, but donation is to forfeit the right for the hand, the eye or the heart after death. I do not know... this may destroy the link. In fact, I hold the view that when we compare between the question of donation and that of sale, we say that donation is, in other words, somethings other than the gift. If we say that donation is gift, then ambiguity arises.

There is no doubt that the one who is permitted to give an organ as a present is also permitted to sell it. The objective aspect is perhaps obvious to me, as I do not present a thing I own to be a gift. In fact, it is not a real gift but a sort of permissibility and waiver of the authority over this specific organ...

Tackling the question of sale, sale, in fact, comes at the bottom of the list of matters from which we can derive the desired interests. There are many matters, and I have tried in this session to classify them in terms of priorities, so that official health organization and authorities consider such priorities, and cover this aspect. I have made such priorities so that no one is permitted to exceed any of them unless after verification that we can exceed a certain matter and move to the next only after we know that we have covered the first.

Now I briefly mention these matters as follows: First, artificial organs and animal organs. If these are sufficient we should not go further to the next. Second, donors after death; someone said, take an organ of my body after death. Third, accident victims who do not donate. I have called for this in the symposium on human life. I said accident victims... the killing is because of accident whether the killer is another person or the victim himself who makes a car accident, or does any other thing which causes killing or death. When the doctor takes from the victim an organ upon which life is not contingent, and after the doctor loses all hope of his life as elaborated by the research in the previous symposium, the killer shall not be the culprit who killed the victim before, and in whom part of life still remains, as it is said when using intensive care devices. In this case, if we take an organ from him we do not kill him. The one who killed him is another person. This does not apply to the case of the person who dies a natural death. If we take an organ from him before dying then we are the ones who killed him. This point has been previously elaborated. I have called for benefiting from those whom we are hundred percent sure that they will unavoidably die such as those who have broken skulls, or those who lower waist is cut, or something like that, the matter which means that

there is no categorical hope that they will come back to life. Perhaps Dr. Al Sayyad has cornered us in this point.

The fourth matter is donors during life against no return. The fifth: donors in life against return. The sixth: the purchase of organs of a dead man, but I do not say "sale". The seventh; which is the bottom of the list, and which I discard, out of my understanding of old Islamic Jurisprudence and many contemporary Jurists in our present time, purchase from a living seller. I differentiate between sale and purchase. I permit purchase, but not sale, the difference between both has been previously elaborated. It should not be said that purchase necessitates sale, and sale necessitates purchase. There is a lot that is written on these two things. But to leave to the seller the option to sell his organs in which a bargain occurs between him and the buyer and he who will pay more, and the sale becomes an auction. This should be totally rejected. If such a thing becomes necessary, let's follow suit as in the case of blood banks; a governmental agency takes over the whole thing. It fixes a standard price on the analogy of wergilds and wergilds are difined and canot be raised nor reduced, so that the whole thing would not be subject to bargain, and to feel assured concerning the other aspects which present no transgression upon anyone.

Chairman, Sheikh Abdulmonem Al-Zain Al-Nahhas

Thank you, Dr. Muhammad Al-Ashqar. Now it is the turn of Dr. Omar.

Dr. Omar Sulaiman Al Ashqar

I agree with our colleagues who call for the impermissibility of sale of human organs. I hold the view that if an Opinion is given this matter will be one of great evil to Muslims from those who are in power, those who have prejudices and the well-to-do, they will procure the organs of the poor and needy with or without their consent. His Excellency, the Minister of Health informed me during the break, before this session that an Indian maharaja took with him four Indians to Britain to take organs from them, as I believe, without their consent. If we approve this matter, evil will be involved. What prevents a man of power or wealth from making another person sign a paper that he sold him an organ while, in fact, he did not, and was not willing to do so, how could we control such matters in the future. This is a matter of evil, a serious one. We see now how people relinquish the values, morals and virtuous criteria, specially in such times. As already mentioned regarding the experiences of other nations, this is the United

States, and this is Britain; they have both begun to reconsider the matter. We start from the point they have ended, after such nations had suffered the consequences. We undergo the wrong experience once again. This is not an alternative, even as a gift, even Britain has begun to be strict in the case of gift. In fact, we need to review the question of gift, because it is possible that people of evil may find a good opportunity in this. Why do we differentiate between a kidney and a hand? If medicine can transplant a hand of a man who lost it, then we have a man selling his hand or leg, and harm occurs. The same applies to the case of kidney. Harm exists if man sells any organ. If need arises, as we may see and witness, and as Dr. Al-Sayyad said in his good talk that there is a dire necessity for this and hundreds and thousands of people need organ transplant, we need to enact a law, whether a law permitting the sale of human organs, or a law permitting the procurement of organs from the dead. If Jurists and doctors are to choose between this matter which is of great evil and the procurement of dead persons, which would they prefer, even if this law is enacted by force and compulsion. Yet, I say that if doctors, information men and Muslim preachers actively make clear to people the benefits of donating their organs or their relatives after death, what if this spreads and tens and thousands of people present themselves for this? still, the quantities we have are still not sufficient, as we have not yet released the relevant formal legal opinion. If an Opinion is given on the permissibility of making use of the organs of the dead, and that man will be rewarded for saving another one in dire need for an organ, I believe that with greater reason we can say we may open the door, or that it is permissible to sell organs. I have a little comment on the research of Dr. Muhammad Naem, as regards the list. Sale is allowed provided that it does not conflict with moral dignity, in the sense that the purpose of sale is not profit nor trade, but from whom, from the seller who seeks neither profit nor trade if this is not the intention, how many people will need to sell an organ, the kidney, for instance? This does not solve the problem. One or two among a thousand or even one in the million. There are very few people who are compelled to sell their organs because they face a dire necessity; they do not need profit. The research does not solve the problem, therefore, the problem still exists with these conditions specified by the researcher, and the problem will remain...

Dr. Tawfiq Al Wa'i

In fact, Dr. Al Ashqar has saved me the effort and elaborated many things I intended to review. However, Dr. Naem and the other colleagues,

by allowing sale of organs and thus violating the sanctity of the human body they all wanted to forcefully insert the aspect of dire necessity to warrant such purchase and this new slave trade. But I say, what is that dire necessity? If accident, victims are great in number, what obstacle is there now that jurists have allowed the procurement of organs from them. I want a statistical report demonstrating the number of victims per year and another showing donors and then the dead. Jurists have partially permitted this in dire necessity. What is that dire necessity? Moreover, what is the necessity which arises and makes us permit purchase and sale of organs, with no controls, and feel enthusiastic like Dr. Al Sayyad, though I have heard that the United States did not feel a pressing need for that? Even, non-Muslims, who do not believe in the inviolability of man, have not so far shown any enthusiasm. Even when we know that this matter is evil and that Jurists have absolutely prohibited it, and as the dear colleagues have talked about some related matters, there is no absolute necesity. What necessity could be there after the permissibility of procuring organs from victims. As I said before, I want statistics issued by the United States. In addition, we have so many victims, and, moreover, we have the dead people. What is the dire necessity after all this? I do not want to say that we wish to come to the conclusion as his Eminence Sheikh Al-Ashqar and Sheikh Omar kindly said. We say we do not finalize things on the same lines as the West did. We have our Sharia; we do not begin nor end. Moreover, we do not twist the texts. How dare we?! We do not permit a thing without a dire need. We should not presume there is a necessity, while there is not in fact.

Dr. Abdulsattar Abu Ghudda

I am committed to add two new points. The first one is strongly highlighted by our colleague Dr. Muhammad Naem that any one who prohibits sale and permits donation falls in contradiction, showing evidence by the fact that sale implies exchange and ownership, while donation also implies ownersip. However, the only difference between both is that it is ownership without indemnity. The answer to this point is that there is a great disparity between sale and donation. The Juristic rule says that what is permitted for sale is also permitted for a gift, but not vice versa. There are so many things which can be donated, but not sold. For instance, in the case of objects of unknown ownership, it is permissible to grant them, but not sell. These case applies to the sale of the Qur'an; Dr. Fawzi Faidullah has pointed out that some Jurists prohibit its sale as it involves commonness, whereas giving the Book as a gift is permissible.

Also, what happens in offering organs is not gifting, but donation.

Donation implies broader sense than gifting as it involves gifting, almsgiving, charity, and self-denial. In many texts, Islam highly recommends charity, altruism and offering suffice it to quote what the Companions of the Messenger of Allah said on many an occasion.

They were willing to sacrifice themselves for the sake of the Mesenger of Allah; I sacrifice my soul for yours, my hand for yours. Such offering and self-sacrifice as a voluntary act and out of altruism are permissible matters as they imply doing that which is reputable, and the door is wide open for that. The Islamic Sharia facilitates donation as it consolidates links and enhances ties among people, whereas sale is based upon bargain, cleverness and reciprocity. Man's body and limbs are not subject to reciprocity. This is a point I would like to highlight, as it has been strongly emphasized to the extent that they believe we fall in contradiction. There will be no contradiction in this, God willing.

Dr. Fawzi Faidullah

I would like to comment on the difference between sale and donation. I add to Dr. Abdulsattar Abu Ghudda that sale and gift or donation are extremely different. That's why sale of organs is prohibited, whereas gift is permissible as they both share the element of property and ownership, that is true, but the difference is that sale involves commonness, humilitation and indifference as proved by the existence of reciprocity, whereas donation or gift implies esteem and honouring since gift is offered for no return. That is why Jurists have differentiated between sale and gift in terms of "guarantee", in the sense that if what is sold is ruined, then price is a guarantee, but in case the gift is ruined while with the person to whom it is given then there will be no guarantee. However, the Hanafites stipulate such guarantee in only one case, when the donor demands to have the gift back and a decree is issued by the ruler to the effect that it should be returned, and the one having the gift refuses to give it back until it is ruined; in this case a guarantee, i.e. "indemnity" should be given. The rule in "gift" is that there will be no guarantee, whereas sale is of greater weight and foremost of joint and several contracts.

In such a way, Jurists decided that everything implying "indemnity" involves "guarantee", and that anything that involves no "indemnity" is not implying a guarantee. The best way for cutting and transplanting organs is donation and gift as they both show altruism, revival of other

souls and a way to please Allah.

Chairman, Sheikh Abdulmonem Al Zain Al Nahhas

Thank you Dr. Fawzi.

Dr. Abdullah Muhammad

I would like to make some comments. As regards sale of organs. I say that if we follow up the formal legal opinions released in this respect, not in sale, but in the benefit derived from the organs, we may find that the first opinion released was made on the analogy based on a word mentioned in a book of the Shafiites on the subject of ablution that one rules out the possibility that the subject is originally the core of the question on which donation or sale of an organ was based, in the sense that if a man's hand is joined by the bone to a woman's hand, is his ablution nullified if he touches this joined part. That is the point. The second branch is, suppose man's bones are joined by those of a pig, what is the Islamic ruling for him, can he offer prayer or not. This is the point in question. The original question of analogy or the first question judged by analogy with regard to this is an Opinion given by Al-Azhar. The question tackles the procurement of cornea from a dead man, by way of analogy the Ulama and those responsible for giving formal opinion then cautions in deciding when can such procurement be permissible, and when not? They confined the whole matter to those sentenced to death. Now their eminence the Sheikhs are expatiating on this question and talking on sale and gift, the permissible and the impermissible this is the first point.

We come now to the second point. Imam Al Ghazali, in his book "Al Ihiaa", on the subject of "Al Hesbah" as regards the command of doing that which is reputable and prohibiting that which is disreputable, presents a hypothetic question: if we find a man cutting an organ of his body, we should stop him, even by killing him, because if one cuts off an organ of his, this is disreputable. Yet warding off the disreputable may reach the extent of killing, exactly like fighting against the aggressive attacker. Then comes the third question. Jurists have permitted a single case of sale, which is the sale effected by the "free".

As regards the subject to which his Eminence the Mufti of Tunisia, Sheikh Al Salami referred, concerning the infidel who regards permissible the blood of Muslims, they say that if Muslims want to make use of him by sale, then his purchase is permissible. The last question tackles equity in

punishment in Islamic Sharia.

When someone gouges out the eye of another. Through retaliation in Islamic Sharia we gouge out the eye of the offender. Can we benefit from the eye of that man in transplant for another person? or if we cut the hand of a thief, or the hand of a criminal who attacked another, can we benefit from such hand, or not? In fact I have an inclination towards the idea put forward by Dr. Hassan Hathout that there should be a state administrative body to benefit from such cases.

Dr. Muhammad Sayid Tantawi

In fact, I agree with the dear fellows who presented these detailed researches. I do not see any contradiction in all our views. As a matter of fact, each of us searches for the truth, the outcome of research, as they say. The proper means to attain truth is the sincere cooperation of science with religion. Hearts should be open, doors should be closed. I do not agree with brother Dr. Tawfiq Al-Wa'i, who wants to close the doors, and says that there is no dire necessity. On the contrary, if there is not need for it today, it may arise tomorrow. Closing doors may conduce to adverse results. When you close the doors before people, they may resort to other things most detrimental. However, we have to cooperate and stand together; the Jurist in his field of specialization and the doctor also in his special domain. They both develop ideas and then search for the most convenient, the most useful, and the least harmful. All questions involve benefit and harm, but we all want to make benefit greater than harm.

In fact, we are all agreed. However, the controversial point is of secondary importance. Perhaps, I have an inclination towards the opinion that there is a difference between trading in human organs through sale and purchase, and donation of organs. Trading in organs leads to great harm and awful corruption, if we open that door. As brother Dr. Hassan Al Shazli says; a youth may present himself, without the knowledge of his parents, to sell a part of his organs for the sake of a vicious deed, like drinking wine, or taking drugs. The opening of such door involves serious danger. On the other hand, as far as the question of donation is concerned, I believe that such case is a rare one, that a man donates an organ in his body, unless in the direst need. I do not donate part of my organs except only to the dear ones. My body is not so insignificant that I give it away irresponsibly. Perhaps I do not donate any of my organs unless when I find my brother, son or dearest friend in direst need for donation, then I place trust in Allah and donate my organ within the

conditions we and the other colleagues mentioned, that donation is made possible only when a reliable doctor expresses the opinion that it entails no appreciable harm to the donor. I say harm because each organ has a specific function. Yet, such benefits vary in degree.

In a nutshell, I believe that such researches are of great necessity as need will arise for gifting organs. Such necessity is well considered by those who can judge it best, the people of the admonition as referred to in the Quranic verse:

SO ASK YE THE PEOPLE OF THE ADMONITION IF YE KNOW NOT.

The people of the Admonition in this context are the reliable doctors, when they also argue with the Jurists.

Thank you very much...

Dr. Muhammad Naem Yaseen

My first remark is on those who differentiate between the seller and the purchaser in terms of necessity. I believe that most speakers have allowed purchaser to buy organs at necessity, but not the seller. I do not know, as if they put in mind that the sellers are not Muslim and that necessity does not apply to them. If the seller is a Muslim and the buyer is also a Muslim, then why we do not apply the principle of necessity to both of them. What my brother Dr. Omar Al Ashqar said is true that the necessity of the seller may be lesser. Allow me to cite an example, where should the mother go? the mother whom Jurists permitted cutting off her abdomen to take out the baby, suppose that the baby suffers complete renal failure and needs a kidney, whereas the mother's kidneys do not fit? she does not have any other choice except obtaining money by selling her own kidney. You may ask me where she should go in this case? I have said that there is a "complex" for necessities under the supervision of a specialized formal institution, in the sense that it must be ascertained that the man suffers actual necessity. I have not talked nor expatiated on the words of my dear brothers. Yet, I have applied the principle of necessity to the seller as well as to the buyer. I have added the seller to the buyer in terms of necessity as if there were a separation between both, and as if the dear brothers wonder how there could be purchase without sale. How could you allow this. It is you who have permitted purchase. How could you permit the buyer to purchase organs? How could the buyer purchase organs? He should look upon the seller from this angle. Another point is

that we have heard that the United States has pinpointed the dangers involved in such matter; whereas we have not until now reached such conclusions. Allah be praised! We want to disagree with the United States this time. Isn't it possible that we may disagree with them tomorrow. I'll agree with America on my subject. You will criticise me because I'll agree with the United States. The question is not that we do not follow them. The Americans have their own circumstances and beliefs. Their methods and techniques are totally different from ours. Their norms and conventions are not the same as ours. It is not permitted to make of this criteria for tomorrow. I have another remark on the techniques adopted by some of the dear brothers as if we are not in a scientific symposium. When we say, for instance, that a fellow has dared and said something or that we have found a brother who dares, we are not, as a matter of fact, in a prohibited place. I believe that if there are immunities for members of parliament, they should also be granted more and more in scientific symposia. We are not like those we heard of in middle ages who do not listen to words of knowledge unless after permission. In fact, this manner should not be adopted in scientific discussion. If someone does or does not dare to say something, we are only in a scientific symposium, and the scientific symposium should be open to all.

It remains to say that the least to be said of donation is that it is a permissible thing to derive benefit from the organ of the donor. Reviewing what all Jurists have said, I found that they all stipulated two conditions for sale to be proper and permissible; the first is that benefit is derived from sale. In fact, our ancient Jurists never imagined the donation of kidney as a matter of benefit, apart from the Sharia. This is one aspect; everything involves benefit and harm as the example of wine which we cited. As I say, everything which implies benefit and harm, then it is really of use. This is the first condition. The second is that sale should bring about lawful benefits. I have read all the description, and books of the various schools, and found that they all look upon these two conditions, as sufficient to settle the dispute in this regard, to the extent that it is said sale is permissible. You say that donation is permitted. You have permitted deriving benefit from it. Naturally, you agree with me that deriving benefit from a kidney is a real fact. Do we need more than saving a patient from definite perdition? real benefitting exists. When I permit donation, I permit deriving benefit from it. In this way the two conditions are fulfilled, in all Juristic schools, that's if I want to twist the texts of the Hadith for Jurists and bring me the Book "Fath Al Bari" to influence you I refer to the part here, but I did not refer to the point that there was in the past ages of our

predecessors and of the "followers", those who said it is permissible for man to sell "himself". Some of them said that it is permissible that man sells himself, but this is an abandoned opinion. I felt shy to include this in my research because I do not agree with them nor shall I ever support it; however, it is written in "Fath Al Bari". The reference to this book is also made. The same reference is also made in the research. Some of them say this, but if I want to search for this, I would have twisted the texts. And there are some other texts that do not need twisting.

Dr. Ibrahim Al Sayyad

Allow me to proceed from the rich region of the Arab Gulf to Egypt, the Sudan, India and Pakistan. I want to seek your formal legal opinion, dear scholars as regards the opinion of Islam towards the utilization of human resources of the Islamic Umma i.e. Pan-nation. Let us apply the philosophy of Islam in the utilization of such resources. The Prophet, may the blessings and peace of Allah be upon him said that

> *"every construction is of bad consequences to owner cave, the property, save the property - that is the inescapable".*

Islam does not approve building a mosque at a cost of ten million, while the remaining parts of the Islamic world have no mosques. Islam does not accept that a man lives in a palace, where one dare not walk on the luxurious carpets, while Muslims in the remaining parts walk barefooted and naked. I would like to talk about the governments and health ministries in poor states which want to expand this programs of transplantation of kidneys. Heart operations cost thousands, while saving a child who suffers from diarrhea and mal-nutrition costs piasters or millemes. I speak the logic of right. Is there any lawful medical interest in saving a life on the verge of perdition with a certain budget, by which I can keep some young people at the prime of life, who could be productive? Isn't it fair to surrender to death when its due time comes instead of resisting it, challenging the nature of Allah and the nature of the Divine Creation and trying as much as possible to make the sterile able to have children, while Allah ordains for him to be childless? Then, he finds himself involved and goes abroad and his wife becomes pregnant through the sperms of another man, because he persists on challenging the Divine Creation. I want this to be the logic of the poor Islamic states. There are some priorities in health services. The question is not to imitate the United States and transplant kidneys and hearts because they do so. There are some

priorities and needs, some of which occupy the foremost position. Please include all these matters on the list because the approach to Islam is not to be greedy while you are obliged to economise seeing that you are poor.

Dr. Hassan Hathout

I do not disagree with Ibrahim Al Sayyad, but I have some reservations. I differ with him in opinion. I wish the authority which prepared for the symposium to be aware of a point through which the dialogue could be much easier if completed. Some years ago, we discussed the question of abortion. We showed a film about the embryo inside the womb along with its movement and pulsation before the conventional time of the spirit to be blown or the angele's visit, thus facilitating the job for our dear Jurists to form a more profound and direct view towards the new data. I wish that our dispute begins with a film on a patient suffering from renal failure, a young man in the prime of youth, whose condition daily worsens, and whose medical tests indicate increasing uremia, renal failure, until the colour of his face pales, and we say that he is departing from life gradually and verges upon death step by step, and then someone says to a Jurist that this young man is your son who is clinically approaching death and that there is a possibility to save his life if we could supply him with a human kidney, the Jurist would say : "let me consider what is permissible and what is not". We say there is in the balance a life of a man at stake. Then, he says it is not impossible, except through donation. After that blood is taken from him, his mother and brothers, but it becomes evident that they are not medically fit to donate a kidney. Then, he says "Therefore, what about a dead man, take the kidney from him". Next, it is said that there is no dead man whose relatives agree, or his kidney fits for transplantation. Then, it is said that we have in the records a man who came to donate, but upon a condition and he can offer and can also hold back being a free man and you have no power on him. The owner of the proper kidney is present, but he wants a thousand dinars I would like to know the opinion of the Jurists as regards what should be done if the patients are their sons, and when the owner of the proper kidney wants a thousand dinars...thanks.

Dr. Mokhtar Al-Mahdi

We actually differ with the United States as regards sale and purchase because we are compelled, but they are not, as they apply the principle of acknowledging the death of medulla oblongata, consequently,

they have abundant numbers not only of double organs such as kidneys but also of single ones such as liver, heart and pancreas. If we could reach an agreement in this regard, I believe that this would, to a great extent, move away this necessity, which we do not like, and to which we should not give in.. thanks.

Chairman, Sheikh Abdulmonem Al Zain Al Nahhas

The question raised by brother Hassan. His Eminence Dr. Muhammad Sayed Tantawi can kindly comment on the example cited.

Dr. Muhammad Sayed Tantawi

By Allah, as a matter of fact. Sometimes, in the scientific questions, Mr. Chairman, hasty answers are not accurate, but I suggest on paper as I did not actually hear him, as I was talking to some dear brothers while he was delivering his words. He is kindly requested to write down the question. All of us together, brother Muhammad Naem and His Eminence brother Al-Khateeb... as brothers we can meticulously answer his question. if the reply is not a hundred percent correct, it will be at least 90%.

Sheikh Ezzuddeen Al-Khateeb

I would like to have a comment I keep pondering about from Oman, that is : the Muftis of Arab and Islamic Worlds confront pressures and complain of intellectual terrorism. People of wealth want the Muftis to pass formal legal opinions to render usury permissible in both the Arab and Islamic worlds. In case a Mufti releases no opinion in this regard, then he is reactionary, hindering the development of life. Doctors present questions seeking formal legal opinion of Muftis in the way they deem right, and they want answers quickly without giving a chance for deep consideration. The Mufti has a balance, the one of the permissible and the impermissible. His balance is not that of the doctors'. The doctor is a man specialized in human flesh, which is contained inside the body of a Mufti who deals with religion, law and doctrine. Therefore, a Mufti should, before expressing opinion, include the Divine Ordinance in the subject... the rules of Sharia... Dr. Muhammad Naem Yaseen expressed his view after deeply considering the matter. I believe he did no, and sat up long nights to come to a decision in an issue in which he may be wrong or right while exercising independent reasoning. The Mufti may be wrong or right. However, he does not yield to the opinions of people, except only to what Allah has

ordained as he believes. and in accordance with the convincing evidence. But if you ask us to release hasty opinions, then Allah, His Messenger, the Believers will not be pleased with this.

Dr. Omar Al Ashqar, the last speaker

This interesting presentation by Dr. Hassan through his elevated literary style... if I imagine it in the heart of a patient in such tragic condition as he portrayed to us as being my son at the death bed, and then he says : "look...his heart is getting weaker and weaker.. we need another heart for him.. If we find another one, he will be cured..what should I do? If a man is found who wants to give life to his children after poverty. This man has 15 children, and he is destitute of money.. you are a rich man possessing hundred thousands and millions... if you give him 50 thousand Dinars, he may givee his heart away to you. This example could take place, and could also be said in a tragic story while the wealthy man can waste away tens and hundreds of thousands to bring new life to his son. This is one question.

The second question is that we have not yet drowned. We have the alternative and it has been presented. I have asked the dear brothers here, and they have answered me by saying that the number of cases which need kidney transplantation is 200. If the two hundred are consumed, we need, as his Highness, the Minister of Health, said, 50 cases, as an annual average. If there is a law rendering permissible the transplantation of a kidney of a dead man, through out Kuwait as a country of 2 million people... if there is a law permitting this, I believe that in a single year or two we shall finish the whole cases we have from 200 to 250 cases. Afterwards, covering the fifty cases will be easy, and we shall not need this hypothesis... why should we, while it is possible, so long as medicine keeps progressing and can perform artificial renal dialysis which can prolong the life of man one day or two, one month or two until we have a dead man whose kidney fits for the patient. Thank you.

Dr. Hassan Hathout

It seems that I have not been successful in presenting the picture I had in mind. Even doctors know that it is not permissible to animate a life by killing another one. However, the picture I have presented was about animating a life through a kidney that one who has two can offer, while he can lead a properly sound life with a single kidney. If it has not been self-denial, it would have been a self-denial in no destitution as the man

dispenses with only one kidney of his two. I hope I have now corrected the picture to Dr. Omar Al Ashqar.

Dr. Tawfiq Al-Wa'i

In fact, I believe that the question of Dr. Hassan is answered, as it brings a solution to the subject. He said : "We have not found this... we have not found this.., until he reached the conclusion that he found nothing available but the sale. He concluded saying he had not found, in this question, except sale. This matter means that such necessity has become inevitable. Jurists of Waqfs have permitted, in the given opinion, the one driven by a dire necessity to purchase organs and the wrongdoer is the seller. The whole thing is solved. There is nothing that involves a problem. In fact, I did not mean in my word anything concerning Dr. Naem, I meant Dr. Ibrahim Al Sayyad, his enthusiasm and between me and Dr. Ibrahim there is intimate friendship, that's why I mentioned his name.

Chairman, Sheikh Abdulmonem Al Zain Al Nahhas

I believe that, at the end of the discussion, the four opinions are now crystallized. They will be sent to the Recommendations Committee. The first opinion believes that the necessity exists, and that the door should not be closed, but within the conditions and restrictions proposed and discussed in the notes which believe that necessity exists, and that donation scarcely occurs.

The second opinion argues that donation, besides road accidents and cadavers are all sufficient to provide the numbers which could be utilized in the transplantation of kidneys or others, a necessity to permit sale.

The third opinion approves the permissibility of the sale and purchase of organs, so long as the permissibility of sale will consequently lead to that of purchase.

The fourth opinion argues that the question needs further study, and that it should be referred to the Islamic opinion Ad Hoc Administration as His Eminence Sheikh Al Salami, the Mufti of Tunisia mentioned in his first opinion expressed in the first meeting. It seems that the four opinions in which the question has crystallized should be referred to the Recommendations Committee to give the last word.



PART FOUR
MATTERS RELATED TO GYNAECOLOGY



FIRST · MEDICAL PAPERS

- Plastic Surgery: Medical Concept and Practice
  Dr. Majed Abdulmageed Tahboub
- Hymenorrhaphy
  Dr. Kamal Fahmi
- Menses, Puerperium and Pregnancy
  Minimum & Maximum Peirods
  Dr. Nabiha Al Jaiyar
- Fate of Bank-Deposited Embryos
  Dr. Abdullah Basalamah
- What to Do with Superplus Fertilized Ova
  Dr. Ma'mun Al Haj Ali Ibrahim
- Sexual Assault
  Dr. Saddiqa Al Awadi et al



PLASTIC SURGERY
MEDICAL CONCEPT AND PRACTICE

Dr. Majed Abdul Mageed Thaboub
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Dinstinguished brothers

I would like to speak to you about plastic surgery and the different applications, concentrating in particular on the matters where the relevant provisions of Islamic Sharia need to be clarified.

In the beginning, I say that the common Arabic term given to this surgery which denotes, changing an appearance to a more beautiful one, does not reflect the reality of the matter. It was inadequately given as an equivalent to the Graeco-Latin term "Plastikos" which appeared in German, then English and French writings and which means "of shopping". Recently, in foreign tongues the form equivalent to the meaning of reconstruction was augmented to the original term. In Arabic words appeared that mean reshaping correction and repair. However, the discrepancy between the term and reality remains great, as you will find evident in our review of the vast spheres of this surgery.

Plastic surgery developed as a branch of general surgery when it became widely demanded and the operations became increasingly complicated early in this century and with the onset of World War I. About twenty years ago and up till now, great advances in this field have been made, and here is a brief review of and an introduction to the various applications of this surgery:

First: Treatment of Burns:

There is a center for surgery specialized in the treatment of burns at Ibn Sina Hospital. it treats burns of the second and third degrees resulting from heat, electricity or chemicals. It is now possible to save patients with up to 90% of the body surface burned. Work in this field is one of an

integrated team incorporating various specializations all cooperating to achieve the best possible recovery for the patient. Patients need post-recovery follow-up and treatment that in some cases includes several operations on skin deformities or joint malfunction.

Second: Congenital Malformations:

A certain percentage of the newly born have congenital malformations which may occur in any part of the body and at different ratios and many of them fall within our field of specializaton and are treated in different ways depending on the type of deformity. The following are only examples: cleft lip, cleft palate, polydactylia, syndactylia, auricle malformations, penile hypospadias and many others.

A completely independent branch has been established to deal with deformities, resulting in immense change in the face and skull bones; this branch is known as: Face and Skull Surgery.

Third: Face and Skull Surgery:

As mentioned above, the bigger number of the cases dealt with under this branch is due to congenital malformations while the lesser is the result of complications of severe fractures of facial bones after accidents, particularly traffic accidents. This branch has developed thanks to the efforts exerted by many surgeons but the greatest contribution is attributed to a contemporary French surgeon called "Toussier" who anatomically scrutinized all occurrences and how to restore them to the original normal position. The post-operative change in appearance is so great since the bones that basically form the shape of the face are moved to new locations very close to their natural positions.

Fourth: Hed and Neck Surgery:

The main concern of this branch is treatment of tumors occurring in this area as well as the reconstruction of excised parts. Different specialists cooperate here to achieve patient recovery and, at the same time, preserve the different functions and acceptable appearance. Excision before the advances achieved in reconstruction was really frightening especially in advanced tumor cases and many of the patients would not bear its psychological effects which may lead them to abandon the community or even commit suicide. However, now, with divine favour, it is possible to reconstruct the area of the excised tumor in one and the

same operation so that the patient leaves the operating room in a good functioning appearance.

Fifth: Microsurgery:

We are concerned here with the removal of various tissues from a certain area of the body to quite a distant and different area where the blood vessels in the removed tissue are connected to similar vessels in the new area utilizing a microscope. This surgery has been making great strides for over twenty years since the Chinese surgeons rejoined severed fingers severed by accidents by the use of magnifying lenses. This techniques is not limited to any one specialization but is applicable to many fields as needed.

Sixth: Hand Surgery:

This branch deals as the name denotes with the treatment of all hand injuries and diseases. Many surgeons limit their practice to this branch of surgery particularly in industrial communities. It generally takes a surgeon a year or more to gain the required specialized expertise.

Seventh: General Plastic Surgery:

This branch treats severe injuries including the various types of cuts, face and jaw fractures, loss of superficial tissue and means of restoration, complications of bed-sores, repair of unsightly scars resulting from injuries as well as removal of acne and tattoo marks, etc. It is essential for a plastic surgeon to be well acquainted with the fundamentals of treatment in this branch.

Eighth: Cosmetic Surgery:

In all the above-mentioned cases plastic surgery is, in fact, a necessity otherwise the patient's life is threatened as in cases of tumors and burns, or the patient is left disabled as in cases of hand injuries and or congenital malformations, while the reason behind operations mainly concerned with appearance is the uneasiness with which the patient views himself and hence the wish to acquire a certain apperance in order to look acceptable.

Nose surgery, known as rhinoplasty, is the most common surgery and is performed, in cases, to treat the effects of an old injury on the shape of the nose; one of the nostrils could be blocked; or the patients sometimes

exaggerate their concern about a slightly different shape. Those patients are usually psychologically unstable and their real problem is something other than appearance.

Second common in the applications of cosmetic surgery is removing surplus fat and skin from the abdomen. This surgery is often required following pregnancy and delivery or after excesive loss of weight, and in most cases the abdomen is so pendulous that it holds the patient from normal movement and activity.

Breast surgery follows in importance. Breast reduction, known as mastoplasty, is very common here in Kuwait, where there are many cases of extremely large breasts which leads to skinning or forms an extra weight that affects the neck and shoulders; some cases occur at puberty, others do not occur until after pregnancy and breast feeding.

There is very little demand, however, on breast enlargement operations. The operation is scientifically considered of too many complications that it is advisable not to perform.

There is little demand on blepharoplasty and rhytidoplasty. However, patients suffering face and eyelid wrinkles feel a great post-operative improvement. Recently, the suction of fat accumulated in various parts of the body as a consequence of obesity has been spreading. The procedure is to introduce a suction tube under the skin through which various amounts of fat are sucked.

The problems of the patients here, as I have mentioned, are partly real, partly illusory, as on the one hand there are health problems and physical sufferings, while on the other hand there is psychological uneasiness from something which is rather unnoticeable. When we choose to perform operaitons, we try our best to help those patients who seem to suffer from a real problem, though it is not, in most cases, an easy task to pass a judgement.

Sex Change Operaitons:

These operations are now performed in many centers in the West as routine operations whether it is to change a male to a female or vice versa. In the first case the male organ is excised, a vagina is built up followed by castration and breast enlargement. In the second case bilateral mastectomy, creation of a male organ, and concealment of the female genital tract in various degrees. Such operations are usually accompanied by

psychiatric and hormonal treatment. Patients here experience hatred toward their original sex due to different factors some of which can be traced to very early years of their lives and a bad upbringing. When born, their sex is unmistakable whether in appearance or otherwise as in the case of a pseudohermaphrodite; and many of such cases perform their function in life completely – they marry and reproduce quite normally as Allah, highly exalted and glorified be He, created them. Then they start having a suppressed desire, which grows until it is overwhelming – they want to get rid of their natural sex and lead the life of the opposite sex.

I do not want to dilate on analysing the problems of this category of people, still, I do not entertain the least doubt that such operations are some sort of action in defiance of the will of Allah, by intefering with natural sex.

If sodomy in the remote past was cause for diret divine affliction and extermination, abnormality in this case can be described as sort of nourishing that which is evil and disreputable.

I am now ready to answer your questions.

HYMENORRHAPHY

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The Hymen: Formation, Shape and Features

The hymen exists at the vestibule of the vagina. It consists of a double layer of thin skin enclosing a delicate tissue rich in blood vessels. Its opening has various shapes : circular, crescent, cribriform, longitudinally fissured, or it could be an imperforate hymen, i.e. without any opening, which is a rather rare case and does not allow the menstrual blood to be shed outside the vagina, and therefore it accumulates in the vagina and then in the uterus.

The hymen is mostly delicate, nevertheless it is sometimes so thick that it requires a defloration operation at marriage; also, its degree of elasticity differs, and there is an elastic hymen which allows coitus without being ruptured.

How Different People View Hymen?

The importance of the hymen as an evidence of virginity differs among the different peoples of the world. In western societies it is nothing but an anatomical septum at the vestibule of the vagina; being ruptured before marriage is the rule in those societies where men accept the fact that girls may have sexual intercourse before marriage as normal and physiological; it is even considered unusual for a girl to stay virgin until married.

In Islamic societies the presence of intact hymen when a girl is married is very important to prove her virginity. In some communities, like a Egypt's countryside and in upper Egypt, the husband, on the wedding night, deflorates his bride's hymen and stains a handkerchief with the resulting blood; the bride's family would then proudly show the blood-stained handkerchief to people as an evidence of their daughter's virginity.

These customs are now less practiced than they once were.

In some of such communities if a girl's family becomes sure or even doubts that she had lost her virginity, the girl will be liable to severe harm or even murder which would be boastfully and unhesitently perpetrated by her father, brother or uncle to save the family's honour and remove the disgrace she brought upon them.

Defloration of the hymen on the wedding night is usually accompanied by some pain and bleeding the degree of which differs from one girl to another depending, to a great extent, on the degree of rupture which in turn depends on the type, thickness and elasticity of the hymen. Bleeding could sometimes be so severe that it requires an emergency operation to stop the hemorrhage by tying the bleeding arteries and suturing the site of rupture.

Medical Problems Concerning Hymen

The following are some of the medical problems concerning the hymen which may face a gynaecologist:

1. In case of the elastic hymen, there will probably be very little pain during the first intercourse after marriage, and it is also possible that there will be no bleeding at all due to the pliability of hymen. The husband might then think that his wife is not virgin, and also her family, this could lead to drastic consequences unless the doctor succeeds in convincing the husband of the real case.

2. In some girls, the hymen is too thick for the husband to deflorate in spite of his repeated endeavors. In these two cases specialist would diagnose the case and reassure the husband and the wife's family, then perform a simple operation, in the second case, to deflorate the thick hymen and allow the marital relationship to start.

3. Sometimes a girl, alone or accompanying her mother, comes to see the doctor to check her hymen since she is about to marry. The story usually told is that the girl, when a young chill had fallen off her bicycle or slipped on her buttocks; and that the mother wants to make sure if the girl is still virgin. In this case a specialist would know whether the hymen is intact or ruptured and, if ruptured, to what degree.

4. In case of the imperforate hymen there is no possible treatment other than operating to make an opening in the hymen to provide a passage out for the menstrual blood accumulated in the uterus and

vagina. In communities where the hymen is important, the surgeon must take good care to keep part of the hymen around the opening intact and enough for the husband to deflorate at marriage.

How Doctors Deal With Hymenorrhaphy?

As a result of the adoption of western ways of living in Islamic countries and giving the youth increased freedom to mix under no control, the problem of girls with ruptured hymen before marriage has grown more serious than ever. Gynaecologists, thus, started to face many cases where they are saked to mend the hymen so that a girl could get married without any social problems.

The reasons of ruptured hymen prior to marriage include the following cases:-

1. Having an illicit sexual relationship.

2. Having an accident that led to injuries in the vulval area which include the hymen, for instance falling on the buttocks on a hard object or falling off a bicycle, and similar accidents.

3. Raping a child or a woman. Any specialist can easily decide whether the rupture of the hymen was due to an accident or rape, because the rupture in this case would be new and accompanied by bruises and other injuries in the vulval area and around it.

In all three cases the doctor is asked to mend the hymen and then a committed muslim doctor would face two opposite choices:-

1. If he performs a hymenorrhaphy, he will be deceiving the future husband, and that it is he who deceived the man.

2. If he does not operate, the result will be:

a. The girl and her mother will psychologically suffer so severely.

b. The girl will refuse to marry in the future in order not to expose herself.

c. The girl will be harmed or even sometimes killed if forced to marry and the husband informs the men of her family when he discovers she is not virgin.

A doctor takes an oath at the beginning of his career not to do anything deceitful, and at the same time, to do his best to protect his

patients from harm and to preserve their physical and psychological health. Facing this problem, gynaecologists act in several ways that differ from one doctor to another according to the degree of the doctor's religiousness, commitment, materialism and inclination to help patients etc.

Actions taken in this concern include:

1. In case of children or young girls suffering from a ruptured hymen due to an accident or rape, some doctors suture the resulting cuts, stop the hemorrhage, if any, and leave the hymen as it is. The doctor would then provide the girl's family with a medical certificate duly signed by him and the hospital where he works, stating cause of rupture. Nevertheless, most families consider such a certificate inadequate to secure a marriage for their daughter later on since most men would not accept marrying a raped girl let alone believing that the rupture was due to an accident.

2. Some doctors would perform a hymenorrhaphy if the rupture was a little one. However, this operation is not always successful. The doctor should inform the girl's family of this possibility and should re-examine the girl a few weeks later to ensure healing of hymen; and if it did not heal, the doctor should provide the girl's family with an official medical certificate, duly signed, that rupture was due to an accident.

3. Some doctors would perform a hymenorrhaphy after the accident or rape, and would re-do it if it did not succeed the first time.

An Overview on Hymenorrhaphy

The operation depends on:

1. The number and depth of ruptures.

2. What is left of the hymen.

For the doctor may mend the existing ruptures, repair the hymen or make a completely new one in the cases where mending or repair are useless; and it is extremely important to inform the girl's family that there is always a possibility of failure.

In the case of hymen ruptures in children who suffered accidents or were raped, it is preferable not to perform a hymenorrhaphy immediately, because of the smallness and delicacy' of children's tissues and vulnerability to injury during the operation which would be a failure in most cases. It is more appropriate in such cases to delay the operation until the

girl is fifteen so that the tissues would be larger and thicker which would provide a greater chance of success for the operation.

Cases where the Religious Opinion Need to be Known

In view of what has already been presented of the different causes for a hymen rupture and of the different views of doctors as to hymenorrhaphy, and in the hope of knowing the opinion of our upright Religion in how a commited Muslim doctor should act, we present the following specific cases for the reverend Ulama to give their opinion as to how to Islamically act.

First:

When a girl comes to the doctor with her husband after marriage to examine her in order to verify her virginity since there was no bleeding during their first intercourse and the husband doubts his wife's virginity:

1. If there is an elastic intact hymen, there will be no problem; for the doctor will then inform husband and explain the case to him and there will be no deceiving involved.

2. If there is an old rupture in the hymen, should the doctor inform the husband of that or not?

Second:

When a girl comes to the doctor alone or with her mother and the examination proves that there is an old rupture in the hymen and the doctor is asked to mend the hymen, should the doctor:

1. Decline hymenorrhaphy in all cases?

2. Undertake hymenorrhaphy in all cases?

3. Assess each case separately and perform an operation when it would lead to the least harm expected?

Third:

When a child or a girl visits the doctor with a ruptured hymen resulting from an accident or rape and the doctor is sure of that, should the doctor then:

1. Decline hymenorrhaphy in all cases and provide the girl's father

with a medical certificate stating cause of rupture?

2. Undertake hymenorrhaphy if the girl is fifteen or older and if she is younger, delay the operation until she reaches this age?

Clarifying how to deal with these cases in a correct Islamic way would no doubt, be an important factor in assuring the commited Muslim doctor that he has acted in accordance with Allah's orders and, moreover, acted conscientiously.

MENSES, PUERPERIUM AND PREGNANCY MINIMUM AND MAXIMUM PERIODS

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Importance of the Study

Allah created Woman to maintain the continuation of creation as He willed it to be. She was shaped in such a way that would enable her to perform her natural duty, i.e. pregnancy, throughout her fertility period from menarche to menopause.

Menses, puerperium, menarche and menopause are not the same for all women, and since menses and puerperium are general and constantly recurring, some problems that the Ulama consider as needing scientific clarification should be elaborated. Also we doctors face in our everyday practice some problems that need good judgement in accordance with the provisions of the Islamic Sharia so that we would not have to depend on individual independent opinions which may be right or wrong. Therefore, I will try to clarify some of the points raised by Dr. Omar Sulaiman Al-Ashqar in his research paper presented in this symposium:

First:

Minimum and Maximum duration of menses and purperium.

Second:

Age of menarche and age of menopause.

Third:

Minimum and maximum pregnancy duration.

Fourth:

Possibility of menstruation occurring during pregnancy.

First: Menstruation

Also known as menses or mentrual periods. The first menstruation, known as menarche, marks the threshold of womanhood and usually occurs around the age of eleven or a little later and does not cease until the menopausal age. The period between menarche and menopause is considered the woman's "period of reproductive life" and it is her period of fertility.

Menstruation is a cycle bleeding that takes four to six days and usually occurs once every four weeks. This cycle may, in some cases, be shorter or longer by one or two days. Menstruation is caused by the thickening of the mucous membrane lining of the uterus, the endometrium, so that its blood vessels, both arteries and veins, widen and its mucous glands become full; all this occurs a few days earlier to menstruation.

How menstruation happens?

During puberty complex changes take place in all systems of the body, especially the nervous system and the genitals, the uterus and ovaries in particular, so that the girl transforms from childhood to womanhood; menstruation is only the apparent part of these changes.

At puberty, the pituitary gland, under the effect of higher centers in the brain, begins to stimulate the endocrine glands including the ovaries to secrete the female hormones which lead to growth of the uterus, and with every cycle the endometrium thinkens and becomes full of glands that carry concentrated nutrients in preparation to receiving the fertilized ovum that attaches itself to the prepared endometrium. However, if pregnancy does not occur, the unfertilized ovum starts to shrink and the rate of secreting hormones falls down causing fragmentation of the lining membrane of the uterus which is then discharged as mentrual flow.

Menstrual Fluid:

Menstrual fluid is unclotted blood, mucus and the cell residue of the lining membrane which was fragmented. It is usually scanty and mucoid at the beginning of the menstruation period, then it becomes reddish, then brown towards the end of the period; and when there is excessive menstrual loss, the menstrual flow aquires clots. Clotted blood is a symptom of excessive bleeding.

The menstrual cycle differs widely from one woman to another – the average is 28 days, but it could be 21 to 35 days. The menstrual period

also differs from 3 to 7 days. The quantity of blood is 80 cc. on overage, but it could also be as little as 40 cc. Deviations from these norms would be due to irregularities in hormone secretions.

Second: Puberty and Menopause

Puberty:

Puberty for girls is marked by menarche. It usually begings at the age of eleven and is seldom as late as thirteen or fourteen and rarely does it start earlier than the age of ten and the girl changes from childhood to womanhood. The occurrence of menarche depends on factors of heredity, race, nutrition and psychological state. It also differs among peoples and according to the atmosphere of social life.

In rare cases menarche occurs earlier than the age of nine, a good example of that is the girl from Lima Madnia, Peru, who had menarche at the age of four and delivered a baby at the age of five; such cases are usually pathological.

Causes of Genital Bleeding before Nine:

1. Brain tumors (pituitary gland or hypothalamus).
2. Malignant ovarian tumors that secrete female hormones.
3. Various tumors in the uterus or in endocrine diseases.
4. If the girl takes hormones that belong to her mother (e.g. the contraceptive pills).
5. A blow; an accident, a foreign body or inflammations of genital tract.

Menopause:

Menopause includes many changes, one of which is cessation of menstruation usually between 45-55, or it may occur earlier to 40 or later than 55.

Usually menstruation ceases gradually – it starts to occur every two or three to six months, then it ceases complete.

It is generally known that the earlier menarche occurs, the later menopause is and vice versa. This also depends on factors of race, heredity, diet and socio-economic state.

Menopause may also occur later than 55. However, as long as mentruation is regular, there is no harm, but if the quantity of menstrual flow changes or menstruation becomes irregular, a gynaecologist should be consulted for it could be due to any of the following causes:

1. Taking female sex hormones.

2. The presence of benign tumors (e.g. fibroids) or malignant tumors in the uterus.

3. The presence of tumors, on the ovaries which secrete female sex hormones.

Third: Minimum and Maximum Periods of Pregnancy

Conception results from a union of a mature spermatozoon and a mature ovum released from one of the ovaries at the ovulation time (in the middle of the menstrual cycle). When the ovum is released, the fimbria facing it pick it up to move through a fallopian tube where it awaits fertilization which should occur within 24 hours. The fertilized ovum soon divides into a cluster of human tissue and at the same times moves towards the uterus driven by the movement of the fimbria and contractions of the fallopian tube muscles. Within 3-4 days the growing fertilized ova takes shape, then moves until it reaches the uterus on the fifth day after fertilization where it remains for two or three days (until the nutrient layer is formed) so that its superficial tissue can engrave a way for itself in the tissue of the endometrium which would by now be ready to receive it.

The endometrium will then start becoming thicker because the fertilized ovum starts right away secreting massive quantities of female sex hormones among other hormones that help pregnancy continuation. The endometrium grows thicker to embrace and nourish the fetus to be. Thus, menstruation ceases as the first sign of pregnancy. The normal pregnancy lasts for 280 days counted from the first day of the last period. However, there are great discrepancies in the duration of pregnancy, even in the cases of regular menstruation. For convenience in calculating the delivery date, pregnancy period is counted 40 weeks.

The delivery that occurs after 28 weeks and before the completion of 37 weeks is premature and the baby is called a "premature baby".

The delivery of a mature baby occurs after 37 weeks and before the completion of 42 weeks. Late delivery occurs after 42 weeks and there is

no fixed time for it because the date of fertilization is not exactly known especially in the following cases:

1.When menstrual cycle is irregular.

2. When contraceptive pills have been taken recently before pregnancy.

3. If the woman was breast-feeding and therefore had no menstruation then became pregnant before menstruating.

4. Late delivery occurs in rare cases like anencephalic fetuses.

Maximum Period of Pregnancy

The main factor that effects delivery is not yet exactly known. Scientists assume it is probably caused by the fetus, the endocrine glands or the uterus muscle itself as it becomes completely distended; or it could be caused by all of these factors together.

Some statistics show that 25% of pregnant women deliver in the forty second week (294 days), 12% in the forty third week (301 days) and 3% in the forty fourth week (308 days). Statistics also show that the rate of stillbirth increase and doubles in cases where pregnancy period is longer than 42 weeks due to fibrous placenta, therefore date of last menstruation should be exactly known. However, when that is rather impossible there are modern techniques and devices which would tell the age of fetus in the uterus:

1. Uterine examination during the early months of pregnancy.

2. Ultrasonic waves.

3. Running tests on the fetus cells in the amniotic fluid and through chemical tests as well.

4. X-raying during the ninth month to check the presence of centers in the fetus bones that would show maturity.

Minimum Period of Pregnancy:

Delivery before the seventh month is abortion. However it is possible, in some centers specialized in neonatal intensive care, to preserve the lives of premature babies even when they are of only six months or weigh 800 grams or more. In Kuwait, however, such centers are not yet available. Provisions are underway at the premature baby department of

the maternity hospital. Successful care can be provided, thank God, to babies weighing 1–1/2 kgs.

Fourth: Bleeding during Pregnancy

If bleeding occurs during pregnancy, it is not menstruation, but it could be due to any of the following causes:

1. Abortion (Pre-abortion bleeding) in the early months of pregnancy – prior to the twenty eighth weeks.

2. Ectopic pregnancy which is accompanied by acute abdominal pains and low blood pressure. This case needs immediate surgery.

3. Vesicular mole which is abnormal and is formed of a mass of cells capable of spreading inside the uterus and is life-threatening for the mother. Such pregnancy should be removed immediately to preserve the mother's health who should be periodically checked after that.

4. Bleeding of a misplaced placenta occurring after the beginning of the seventh uterine month.

5. Bleeding of premature placental separation.

6. Bleeding caused by an ulcer or a malignant tumor in the reproductive system.

Even in cases of pregnancy in a uterus bicornis, no menstrual bleeding occurs in the empty uterus because it, too, would be affected by the hormones secreted by the placenta for the continuation of pregnancy and therefore no bleeding occurs unless in case of abortion.

Puerperium:

Puerperium is the post-delivery period during which many changes take place until the reproductive system is back in its normal state before pregnancy as during pregnancy the uterus weighs up to 900 grams and a week after delivery it falls down to 450 grams then to 55 grams in two months time.

Puerperal Discharge:

This is fluid discharged from the uterus after delivery and is usually blood during the first four days then it becomes lighter in colour and less in quantity until it is nothing but colourless mucus after ten days or it may

continue for four week. Thus, the minimum period of puerperium bleeding is one week to ten days.

The maximum, however, is the whole period of puerperium, i.e. six weeks or 42 days and if the bleeding continues for a longer period, this is abnormal and may be due to remains of the placenta still in the uterus which will therefore stay large, not shrinking to its normal size. Prolonged bleeding after delivery could also denote the presence of fibroids or inflammations. Such cases should therefore, be diagnosed through uterine examination, with ultrasonic waves and by taking specimens and smears from the uterus for microscopy and culture tests.

FATE OF BANK DEPOSITED EMBRYOS

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Test tube babies have become a living reality, for invitro fertilization is now an every day occurrence in many parts of the world including the Arab and Islamic World. There are, many muslim families, muslim women, that are being treated from infertility with this procedure!

The success of invitro fertilization is conditional upon the extraction of numerous ova, therefore a surplus of embryos lies in every laboratory where this procedure is performed...! Among these embryos are embryos of muslim families; hence I am raising an issue of importance to the whole world, especially the Islamic, namely:

Fate of Surplus Embryos

The surplus of embryos is now preserved in banks called «Embryo Banks» available in every center of invitro fertilization.

Is Inviolability Applicable to Embryos in Banks?

In order to give a clear perspective, I have, in this research paper, included the following points:

— What is the Embryo?

— When does life begin?

— Sanctity of Embryos in the Islamic Sharia.

— Fate of Bank-deposited Embryos.

Embryo:

A human starts from one cell, half of it is the mother's ovum and the

other half is the father's spermatozoon. And by the amalgamtion of the two together the life of the embryo starts as one cell (the fertilized ovum). Then this cell divides into two, then four, eight, sixteen and so on, until the number reaches six billion cells at delivery. And highly exalted be He who says:

> *DEEMEST MAN THAT HE IS TO BE LEFT UNCONTROLLED? WAS HE NOT A SPERM OF EMISSION.*

Man's voyage from one cell to 16 cells in the laboratory takes about 4 - 5 days (and from one cell to 6 billion cells (the pregnancy period) about 283 days.

It has been medically (i. e. scientifically) agreed to call the period of Man's uterine growth since the fertilized ovum starts to divide until the end of the first 8 weeks of life «Embryo», and to call it during the rest of pregnancy period «Fetus»..!

The reason is that the (embryo) during its uterine growth passes through two important stages of formation: during the first, which takes 8 weeks, the embryo is in a state of formation, shaping and continuous growth of cells...! Looking at it in this stage one would find a cluster of cavity and tubal tissue (like a clot that turns into a lump of flesh later)... of no perfect human feature!

The most important anatomical feature of this stage is the presence of the neural groove which is the beginning of the nervous system formation in the embryo, after this stage (i. e. after the stage of the first eight weeks) the embryo starts to grow differently so that when looking at it one can recognize the figures of a human being starting to grow. This is described in the Qur'anic verse concerning creation and development in the uterus:

> *THEREAFTER WE BROUGHT HIM FORTH AS ANOTHER CREATURE. BLEST THEN BE ALLAH, THE BEST OF CREATORS.*

The first stage of the embryo's uterine growth (i. e. the first few days and weeks) is the most serious stage in the life of a human being. Anything that is not normal of this stage may lead to malformation and an immense change in the human appearance. Thus, we can say that the embryo is a human being during the first 6 - 8 weeks of its life - be it in the uterus or in a test tube in an in vitro fertilization laboratory.

It is worth mentioning that the Japanese date man's age from the beginning of pregnancy (fertilization), i. e. starting from the time it is an embryo in its mother's abdomen...!

When does life begin?

Life exists even before the formulation of an embryo, for, as we know, it exists in both the spermatozoon and the ovum before they unite.

In a previous paper I showed that there is a difference between the existence of life and the breathing of spirit. When a mother starts to feel the embryo's movements, this is not a sign of the start of life, but a sign that the limbs of the infant have become strong enough to produce echoes in the mother's body as it moves..!

The possibility that the embryo develops a feeling of its mother during the first few weeks of pregnancy (i. e. when the neural groove starts growing after 16 - 18 days from fertilization) does not necessarily prove that the embryo has become a perfect human being (with spirit already breathed into it) for feeling exists even in plants.

In my opinion:

A human being inside the uterus passes through a primary cell stage, then a stage of a perfect human being, then the stage of spirit being breathed. However, with the present limitations I cannot elaborate more on this point!!

Sanctity of Embryos

The Islamic Sharia has secured the right to life for embryos, and prohibited harming them; and Sharia has in this respect, provided well known rules protecting embryos from being tampered with by ways of abortion or killing.

Some of the pertinent Sharia rules are:

1. Islam has legislated an indemnity for causing abortion called «*ghurra*» when abortion is induced prior to the fourth month of pregnancy; *ghurra* is 1/10 of an adult *diyah* i. e. bloodmoney, while the indemnity for causing abortion after the fourth month is a full *diyah;* the indemnity is to be paid by the person who induced abortion to the legal heir (s) of the embryo...!

The question that crops up here is:

Is Ghurra applicable to the person who spoils surplus embryos in the laboratory??

2. If a man dies leaving a pregnant wife behind, the disposal of his estate may not be effected until pregnancy is carried to term and the share of the baby is allocated...!

By analogy, should shares of surplus embryos preserved in banks be allocated as well until their fate is decided??

3. If a pregnant woman aborts, regardless of the embryo's stage of growth, and the aborted embryo showed a sign of life (the signs of life as defined by our reverend Ulama, this embryo shall inherit of its legal ancestors who die later to occurrence of preganancy; and if this embryo dies, its estate shall go to the legal heir (s).

In fact, the tolerant Sharia has protected embryos, for it provides for the embryo's right to *ghurra* were if it zere in the earliest stage of growth, for it was said that, «If a woman discharges a lump or blood or anything else; that if shown to reliable people, and they witness it contained something of a created human being or the beginning of it which if carried to term would become a perfect human being, the perpetrator shall be (liable).» Consequently it is therefore evident that Sharia guarantees the right of embryo from the first moment, in the division stage, even if it starts in a test tube or a (petri dish) in the laboratory...!!

It is as Imam Al - Ghazali, May Allah have mercy on his soul, put it: «In such doing there is a crime against an existing «being» for whom there are certain phases. The first is when the sperm is in the uterus and mixes with the woman's fluid and becomes ready to receive life, Ruining it is a crime, and if the sperm becomes a clot, the crime assumes graver proportions... etc.»

By his correct way of thinking, Imam Al - Ghazali could go even beyond what we are tackling today, that is fate of surplus or frozen embryos, which come to a certain stage of growth in the laboratory, i. e. the morular stage (*Al-tutah*) or a little before it.

Embryo Banks

Human embryos were first deposited in banks in 1976 at Oldham District Hospital, as mentioned by Dr. Edwards in his essay published in the World Medical Journal, Feb. 1986.

For a long time before that animal embryos were preserved in embryo banks and sperm banks, established originally for animal husbandry. and the success achieved in this field encouraged scientists to apply the same procedures to the treatment of human infertility!!

The need became pressing for frozen embryo banks, when laboratories started to have surplus of embryos after in vitro fertilization started.

In the procedure of in vitro fertilization, doctors and scientists used to extract one ovum from the woman's ovary, then artifically inseminate it in the laboratory and when the first stage of human life is formend they transfer it into the uterus. This technique led to a limited success of in vitro fertilization: therefore new techniques were devised, i. e. chemical induction of ovulation by drugs. This technique produced more than one ovum; and it has become possible lately to extract 4 - 6 or more ova every time ovulation is induced. It has become possible now to in vitro fertilize 4 - 6 ova every time and, thus, have 4 - 6 embryos. Usually, only 3 embryos are implanted into the woman's uterus while the rest are kept frozen in the bank. For it has been found that the implantation of 3 embryos at a time rather than one leads to better chances of pregnancy: for, in most cases, one of three implanted embryos will continue growing. If a larger number of embryes gets implanted the risk of miscarriage increases.

Embryo banks are nothing but a refrigerator or a small chemical room in which liquid nitrogen is used for cooling purposes.

Cooling is used to freeze tissues and cells completely since organic reactions stop in frozen tissues. When these tissues or embryos are to be used, the temperature is raised gradually so that chemical reactions restart or rather life returns to them.

The Fate of Bank Embryos

Every in vitro fertilization center all over the world, including the Islamic world, has, no doubt, an embryo bank in its laboratory.

The usage (or fate) of the embryos preserved in those banks can be summed up in the following:

1. Replacement those embryos, or some of them, back into the mother's uterus (if the previous attempt fails); because as mentioned above 4 - 6 ova are fertilized every time, then 3 of them are injected the first time, and the rest is injected if pregnancy does not occur after the first injection.

2. The embryos can be injected after a period of time and after the woman has given birth to her first pregnancy. Thus the doctor will have available for use ready embryos saved in the bank from the previous operation. These embryos can be preserved for many years and

whenever the husband and wife, or the wife only in the West, decides to have another baby, the ready embryos are «cashed» from the bank. It has actually happened that a wife, after her husband had died, requested to use the embyos she had frozen in the bank..!!

The question that imposes itself in such a case is:

How can we calculate the age of the human being that was a frozen embryo for a number of years, then was released, and started to grow, and assumed an active role in life??

3. The third use of frozen embryos - nowadays - is to donate or sell them to another woman. So the embryos are taken out of the freezer and put into the other woman's uterus, or the hired uterus (surrogate uterus). It was said, in this respect, that some in vitro fertilization centers try to make use of the surplus embryos by mixing them with the embryos of another woman under treatment: or when returning the embryos to the woman they return her embryos and probably add to them one or two of the embryos deposited in the bank so that the chance of successful pregnancy becomes better.

4. The fourth usage of surplus embryos deposited in banks has aroused a great controversy - moral and secular controversy, not Sharia - wise: I mean the use of surplus embryos in experiments..!! Making scientific experiments on embryos has become widely demanded by the scientific circles and has, in the west, raised a serious moral, social and judicial issue. The fate of surplus embryos, no doubt, has attracted the attention of the world today and it is a must that the Muslim scientists declare their technical opinion.

Though the first usage of surplus embryos (i. e. implanting them once again into the mother's uterus) has become acceptable scientifically and socially and probably by the Sharia as well, yet I believe that preserving embryos in banks for a long period of time will result in many prohibitions, the least of which would be for a wife to request implantation of her embryos after her husband's death - for as it is well known, the death of husband annuls the marriage. In addition, keeping embryos in a bank exposes them to mixing and confusion with others.

If success of the operation can never be guaranteed without having surplus of embryos they should then be used by the natural mother immediately, during the existence of marriage, and with the approval of the two parties concerned. Surplus embryos should not be thrown away as

garbage or left to die, they should end into the mother's uterus, and it is up to Allah, the Mighty Lord, to determine their fate...!

I do not accept experimenting with embryos - for though it will lead science and scientists to medical discoveries yet the inviolability of Man must be kept, even when he is no more than one cell. In Britain, an ad hoc committe, formed particularly for this issue, called Warnock's Committee, allowed experiments on embryos during the first 18 days of pregnancy, i. e. before the neural groove starts forming. There is still, however, a wide opposition against experimenting with human embryos.

The other usages of embryos, like implanting them into a different woman, are prohibited by the Sharia.

What is required, now, is:

To focus on the Sharia issues in this respect in order to clarify them for everybody; as the desire for reproduction added to the fact that many Muslim families lack the knowledge about related Sharia varities have misled some into the prohibited.

Conclusions

1. The surplus fertilized ova, in the in vitro fertilization process, are in fact embryos, whether according to science and to Sharia. And hence they have a sanctity that must not be violated by killing or implantation into a surrogate mother's uterus, nor should they be exposed to laboratory experiments; for such experiments might be the beginning of a human disaster.

2. Several Sharia Opinions have been issued allowing in vitro fertilization as a treatment of infertility, provided that it is performed while the marriage is valid and only between husband and wife. What I wish for is to add to this Opinion items that would secure the fate of surplus embryos, for instance something to the effect that the treating doctor should not leave any surplus embryos without injecting them back into the mother's uterus and that they should not be killed or neglected; for Allah alone has the right to determine the fate of this creation. Preserving the surplus embryos in a bank may make them vulnerable to the other usages prohibited by sharia.

3. I hope that in every medical center, in the Islamic world, where artificial insemination, whether internal or external (in vitro), is practiced,

an ad hoc committee would be formed to supervise and follow up, to care for surplus embryos and to protect muslim families from being trapped into the concomitant prohibited practice.

WHAT TO DO WITH SURPLUS FERTILIZED OVA?

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This subject is, no doubt, extremely important and has become a medical reality in this age. A Muslim doctor should embrace all the medical and legal jurisprudence aspects of this issue in order to have clarity of vision.

The subject under discussion is new in the world of medicine: approving the modern medical procedure followed in the treatment of certain cases of infertility - fertilization outside the body known as in vitro fertilization or «test tube baby». The procedure is to suck ova from the wife's ovary using an laparoscopy or ultrasonic visualization. The ova are then fertilized with the husband's sperm in a test tube. When fertilization has happened and the ova have started to grow and divide, they are put back into the wife's uterus via the vagina and the uterine cervix. If, by God's will, an ovum is attached to the endometrium, the embryo will then grow as in natural pregnancy. In the beginning, this procedure was only used in cases of infertility caused by blockage of the fallopian tubes but its use has now widened to include cases of partial infertility in men as well as infertility of unknown cause.

The rate of success of fertilized ova getting embedded in the endometrium is in direct proportion with the number of fertilized ova returned into the uterus. When only one fertilized ovum is returned the ratio is 15%, and rises to 23% if two ova are returned, and it goes up to 30.2% when the returned ova are increased to three. If more ova are returned into the uterus the ratio of success does not become any higher, instead, the ratio of possible multiple pregnancy, with all its dangers, rises. Thus, the best results are to be achieved by returning three fertilized ova into the cavity of the uterus. In order to get three ova fertilized and good, a greater number of ova, probably double this figure, needs to be collected

from the mother's ovary because the fertilization ratio in the best centers is 95% in cases of fallopian tubes blockage and only 58% in cases of male partial infertility. In addition, a great part of the fertilized ova would be unfit to be returned, e.g. fragmented or fertilized by more than one spermatozoon; for these too are spoiled, if returned into the uterus they would not result in normal pregnancy but a vesicular mole or even a malignant tumor inside the uterus.

In order to get a large number of ova, hormones activating the ovaries are adminstered to the wife and in many cases the resulting ova are eight and sometimes as many as ten. Consequently, there is a good chance of having a surplus of fertilized ova - so what do we do with them?

The available alternatives are:

1. To be thrown away and washed away when test tubes are washed.

2. To be left in a test tube to grow, and in this case their fate is also extermination, since the longest period of growth for such ova, so far recorded, is 16 days; after which the ovum breaks out of its membrane and stops growing. At this stage the ovum will not get embedded in the endometrium if returned into the uterus.

3. To be given to another woman who needs them, e.g. one who lost her ovaries, but as we have come to know this will be illegitimate because of the involvement of a third party from outside the legitimate marriage contract.

4. To be preserved by chilling and freezing to be used in another menstrual cycle if no ova got embedded, the first time, as long as the marriage contract is valid. But if the contract is terminated whether by divorce or death of husband or wife, what shall we do with the preserved ova? And who has the right to decide: the doctor or the legal heir(s) or any of the two parties?

5. To be used for purposes of scientific research which is always compelled by necessity and, as it is well known, we could have never reached this great achievement nor could we succeed in treating these serious cases of infertility were it not for the continuous research in science. Through the application of this modern procedure 2000 babies were born around the world up till November, 1986. The two scientists: Robert Edwards and Patrick Steptoe of Oldham, England, have done numerous researches on fertilized ova to ensure safety of the procedure

and for fear of occurrence of malformations, and only when they were sure, the trials of returning ova into the uterus started. They followed up the first woman who got pregnant by in vitro fertilization and delivered her baby in 1978. What is the scientific importance of continuing research on fertilized ova, which, as above mentioned, are of two types: one is spoiled and can not be returned into the uterus and the other is good but superfluous?

First: Research on cases of infertility and its causes.

The rate of infertility in both husbands and wives may reach 12%, and the areas of research here are:

a. Research on male infertility: which is the main cause in about 40% of all infertility cases in husbands and wives. The available data of this type of infertility are inaccurate. We need to know the capability of the spermatozoon on penetration. What causes some sperm to lose this capability? What causes an ovum to be penetrable by more than one spermatozoon so that it becomes spoiled and if it grows the pregnancy becomes a vesicular - mole or turns into a life - threatening malignant tumor.

b. To achieve a higher ratio of success rate of in vitro fertilization; for the highest ratio of pregnancy in the best centers after returning 3 good fertilized ova does not exceed 25%, taking into consideration that a lot of ova do not get fertilized and some of them become spoiled and consequently, if we take the number of patients being treated into account, the ratio of success then becomes 15% only. This ratio needs to be raised a matter achievable only through scientific research, particularly to find out the causes of fertilized ova failing to get attached to the endometrium when returned into the uterus.

c. To study ways of preserving ova or fertilized ova to be used in a later menstrual cycle and to ensure that such a long period of chilling then heating does not cause any disorder in the preserved ova that could result in malformations - taking into consideration that researches on laboratory animals showed that the ratio of fertilization with more than one spermatozoon increases when ova have been preserved for a long period of time.

Second: Studying cases of habitual abortion and implantation failure.

I would like to mention here that about 60% of ova fertilized naturally

in the fallopian tubes do not get implanted. This is known by studying the ratio of hormones secreted by fertilized ova in women during the last week of the menstrual cycle. Consequently, blood shedding signifies the occurrence of unnoticed abortion. Habitual abortion is still an enigmatic problem for doctors. Scientific research is urgently needed to relate the causes of fertilized ova not growing and failing to get implanted. This may be achieved through the study of genes which control the factors affecting growth, particularly in the fertilized ova that grow abnormally. Study of these genes is now being conducted on abortion products. Other studies are also carried out on ova of female laboratory animals. It is preferred, however, to make these studies on ova of the human female, especially when such ova are superfluous.

Third: Studying nucleic acid in the fertilized ovum to diagnose inherited diseases and probably treat them in the future.

What is done now is to take some of the placental cell during the first few weeks of pregnancy for testing, and if the results show the presence of an inherited disease abortion is induced, if allowed. A better procedure would be to take a specimen from the fertilized ovum and when an inherited disease is detected such an ovum should not be returned into the uterus. This is a sophisticated technology that science has not yet achieved, since the number of cells in a fertilized ovum is so small, but will hopefully be achieved, by God's will, through the improvement of cell implantation methods used in laboratories. There is also a great future hope in getting to recognize the gene causing each of the hereditary diseases and to deal with such genes using the so called genetic engineering, the future of which, I believe, lies in conducting research on fertilized ova before implanting them into the uterus.

Fourth: Studying malformations resulting from environmental factors.

The ratio of embryonic malformations reaches, in some regions, 3%, in some cases due to hereditary factors while in others as a result of environmental factors like exposure to chemical substances. Research on fertilized ova may lead to the identification of environmental causes of the various malformations, and consequently doctors will become able to advise the expectant mother to avoid such environments.

Fifth: Research on family planning

Various researches are now being conducted to develop methods or devices that would prevent the fertilized ovum from growing or getting attached to the endometrium like the intrauterine contraceptive device (IUD). However, most of these researches are experiments on laboratory animals. What I have mentioned clarifies the existing medical need for research conducted on fertilized ova, and I would like to point out that a fertilized ovum is different cellwise from an embryo already implanted in the uterus wall. The egg cells divide and multiply, but only in part of it appears the primary protrusion of which the embryo starts forming after the ovum gets implanted in the uterus wall. This protrusion might not appear at all, in which case the result would be a blighted ovum or it could develop into a vesicular mole or uterine cancer. A fertilized ovum is partially alive, and therefore respected, so are the sperm and unfertilized ova; they too are equally respected for the partial life they carry.

However, when necessary we conduct scientific research on both sperm and unfertilized ova; and I believe that the existing scientific necessity justifies carrying out research on fertilized ova especially when superfluous.

And praise is first and last unto Allah.

SEXUAL ASSAULT

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Since Islam is so meticulously concerned with the safety of muslim communities and individuals, Islam law-makers are keen on issuing laws derived from the Munificient Qur'an and the prophetic Sunna and were extremely careful to explain all the aspects pertaining to every individual problem separately and maintain the same accuracy in dealing with the problems of societies over the ages.

Abortion is one of the problems, made impermissible by Islam except in cases of extreme necessity, as set forth in the law, article 12: «Doctors shall be prohibited to abort a pregnant woman except for the purpose of saving her life. Nevertheless, when pregnancy has not completed four months, abortion may be done in the following two cases:

a. If continuation of pregnancy will be extremely detrimental to mother's health.

b. If it becomes certain that the embryo will be born suffering severely from either physical deformity or mental retardation and such malformation is incurable provided that both hasband and wife agree to abortion.

Abortion operations, in cases other than extreme emergencies, shall be performed in a government hospital conditonal on a decision by a committee formed of three specialist doctors of whom at least one shall be a specialist in gynaecology and obstetrics.

The Minister of Public Health shall issue a decree providing requirements for membership on such committee and procedures to be followed for performance of this operation.

But what is the attitude of Islam in the case of sexual assault by a person in a degree of consanguinity precluding marriage, for example,

God forbid, a father with his daughter, or similar cases - if such assault led to pregnancy, would abortion be allowed for the following reasons:

1. Such a situation will be absolutely rejected by community members.

2. Medically, this foetus will be vulnerable to a high degree of deformity according to scientific hereditary laws.

3. Islam allows marriage to relatives of the fourth degree (i.e. paternal and/or maternal cousins), but no closer as allowed in certain societies (i.e. paternal or maternal uncle marries his niece, or maternal aunt marries her nephew, etc.), due to the health complications that would be caused by such a marriage as later proven by modern science, and to which Islam, being a comprehensive Religion good for all times and places, drew our attention. All proven facts and scientific researches point out the danger that could result from such a sinful congress and the dangers to which the embryo resulting from incest relation could be subject.

The Question is:

— Shall we let this bud grow until it blossoms, or shall we abort the embryo before the end of the first forty days if affair is discovered?

— If it becomes evident that this embryo is grossly deformed to an extent that would prevent it from normal life and adaptation to after birth life, should we let it be so or would we get rid of it regardless of its uterine age?

— Shall we reveal the girl's secret to those in charge (relatives for completion of delivery procedures among other things) and officials at all the different levels, especially those of the Ministry of Interior?

— If Islam prohibits abortion, to whom shall the baby be attributed in this case?

— Should the baby be informed in the future so that he/she would not marry a relative of the first degree when he/she attains of marriage?

Annotations

1. Ra'uf Ebeid: Crimes Against People and Property, Edition 1974, P. 291 see:
   The Secret of Medicine, a Research Paper by;
   Dr. Abdulsalam Al-Termanini

1. Al-Mughni by: Ibn Gudama 8/210.

2. Sharh Al-Nawawi ala Muslim 16/135.

1. Hayat Al-Sahaba (Lives of the Prophet's Companions) vol. II, . 730, from Kanz Al-Ummal (2: 150).

1. Ibid 2/730.

SECOND: FIGH & LEGAL RESEARCH



PROVISIONS FOR PLASTIC SURGERY IN ISLAMIC JURISPRUDENCE

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Introduction

Allah, glorified be He, created man in goodliest mould, best structure and shapeliest form, He made him symmetrically and perfectly constituted. And made love of adornment and beautification instinctive in him and urged him, through Messengers and Prophets, to adorn himself. He says:

> *OH CHILDREN OF ADAM! TAKE YOUR ADORNMENT AT EVERY WORSHIP; AND EAT AND DRINK AND WASTE NOT. VERILY HE APPROVES NOT THE WASTERS. SAY THOU: WHO HATH FORBIDDEN THE ADORNMENT WHICH ALLAH HATH PRODUCED FOR HIS SERVANTS AND THE CLEAN THINGS OF FOOD? SAY THOU: THESE ON THE DAY OF JUDGEMENT. SHALL BE FOR THOSE ALONE WHO IN THE LIFE OF THIS WORLD HAVE BELIEVED. THUS WE EXPOUND THE SIGNS UNTO A PEOPLE WHO KNOW (1)*

The Prophet, may the blessings and peace of Allah be upon him said:

> *"Verily Allah is Graceful and He loves grace" (2)*

(Literally: Allah is beautiful and He loves beauty). Though Islam adornment and beautification lawful for both men and women. It made them more well allowable for women than for men. It made permissible for women to wear silk and adorn themselves with gold. The Prophet, said:

> *"Wearing of silk and adornment with gold are impermissible for males of my Nation, but permissible for its Women".*

Whereas adornment is an act of inessential improvement for men, it is part and parcel of woman's needs for without it a woman is prone to face embarrassment and inconvenience. So, it was necessary to give her more freedom in what she may adorn herself with, for her husband, in order to enable her to keep his affection and to satisfy his desires.

Islam, however, did not give free rein to such instincts and desires, rather it called man to keep them under control in compliance with Divine Guidance. Hence it put limits that one should not exceed and prohibited things not to be deemed permissible. Such limits and restrictions are not meant to restrict people's lives or made in order to deal high-handedly with them, rather they were set by Allah, highly exalted and glorified be He, to maintain the humanity of, man and that He Himself may directly look after the welfare of mankind.

Therefore He made legislations, sent down scriptures and appointed Messengers.

Some forms of adornment, such as «*wasl*» (artificial lengthening of hair), tattooing, «*washr*» (seperation of front teeth and incisors to create spaces between each of them) and «*namas*» - or «*nemas*» (plucking of hair from the eye brows), etc., which were made impermissible by Islam because they represent departure from natural creation, change of what Allah, glorified be He, created, fraudulence deception and other vices.

Those were not the only things prohibited in respect of adornment and beautification, but they are specified by the Sharia to indicate equivalent and emerging similar forms, either in shape or in content. I am going to use these prescribed texts; (which specifically prohibit the above practices) as basis for judging new developments in cosmetic surgery.

I have conducted this research in response to the desire of plastic surgeons who wanted to know the Sharia provisions for the operations they perform. I have explained Sharia provisions for plastic surgery in the Islamic jurisprudence and clearly stated the causes for which these provisions were made. In doing so I relied on original figh sources of the Four Figh Schools and the Zahirites' and other schools, in addition to commentaries on the Munificent Quran, the Sunna as well as explanations thereof. I have divided the research into three chapters and a conclusion:

First chapter: Beautification of hair with artificial lengthening, removal and surgery.

Second chapter: Beautification of body with indelible colours and marks.

Third chapter: Beautification of organs by means of surgery.

I conclude the research with general rules that should be observed in plastic surgery.

FIRST CHAPTER

Beautification of Hair By Means of Artificial Lengthening, Removal and Surgery

Hair is an adornment for both man and woman, Sayeda Aisha, may Allah be pleased with her, said: (The Beard is an adornment for man, and hair is an adornment for woman). The Prophet, ordered:

> *"that hair should be combed and taken care of, but without excess. He, forbade combing hair except from time to time" (4).*

Hence a woman should not spend long hours every day combing it and neglect religious and social obligations. This chapter will contain rulings related to adornment of hair of the head and hair on the face.

First Question

Beautification of Head Hair

Several methods for beautification of the head hair have been known. I will explain, in the present question, the provisions for these methods which are: artificial lengthening, shaving of head, «*gaz'*» (i.e. having part of head shaved and leaving a part unshaven), plucking out white hair and treatment of hair to whiten it prematurely.

First: «wasl» (artificial lengthening of hair).

Jurists by consensus agreed upon the general prohibility of *wasl* (5). They cited the following Hadiths as proof:

a. Aisha, may Allah be pleased with her, narrated:

> *"An ansari girl was married and she became sick and all her hair fell out. Intending to provide her with false hair, they asked the Prophet, may the blessings and peace of Allah be upon him, who said, Allah has cursed the woman who artificially*

lengthens (her or someone else's) hair and also the one who gets her hair lengthened"

(Related by Al-Bukhari in his Sahih) (6).

In an account related by Muslim, Aisha reported:

"that a girl of the Ansar got married. She fell ill and lost the hair. They (her relatives) thought of adding false hair (to her head), so they asked Allah's Messenger, may the blessings and peace of Allah be upon him, about it, whereupon he cursed the woman who adds false hair and the woman who asks for it" (7).

And in another account by Muslim she (Aisha) reported:

"that a woman from the Ansar married her daughter who had lost her hair because of illness. She came to Allah's prophet, may the blessings and peace of Allah be upon him, and said: Her husband wants that false hair should be added to her head. Thereupon Allah's Messenger, may the blessings and peace of Allah be upon him, said: The woman who adds false hair has been cursed (8)".

b. Al-Bukhari related in his «Sahih» that Asma, the daughter of Abu Bakr, may Allah be pleased with them, related:

"A woman came to Allah's Messenger, may the blessings and peace of Allah be upon him, and said, I married my daughter to someone but she became sick and all her hair fell out, and because of that her husband does not like her. May I let use false hair? On that the Prophet, may the blessings and peace of Allah be upon him, cursed such a woman artificially lengthening (her or or someone else's) hair or getting her hair lengthened artificially" (9).

In another account by Al-Bukhari, Asma said:

"Allah's Messenger, may the blessings and peace of Allah be upon him, has cursed such a woman as artificially lengthening her or someone else's hair or getting her hair lengthened" (10).

In yet another account she also said:

"A woman asked the Prophet, may the blessings, and peace of Allah be upon him,: My daughter had an attack of small-pox and thus her hair had fallen out and I married her to someone, should I add false hair to her head? Whereupon he said: Allah

has cursed the woman who adds false hair to her head and the one who gets false hair added to her head" (11).

In an account by Muslim, she (Asma) also reported

"that a woman came to Allah's prophet, may the blessings and peace of Allah be upon him, and said: I have a daughter who has been newly - wed. She had an attack of small pox and thus her hair has fallen out; should I add false hair to her head? Thereupon he said: Allah has cursed the woman who adds some false hair and the woman who asks for it" (12).

c. Narrated Ibn Omar, Allah's Messenger, said:

"Allah has cursed the woman who lengthens (her or someone else's) hair artificially or gets it lengthened and also the woman who tattoos (herself or someone else) or gets herself tattooed" (13).

(Related by Al-Bukhari.)

He also reported, in an account related by Muslim,

"Allah's Messenger, cursed the woman who adds false hair or asks for it and the woman who tattoos or asks to be tattooed" (14).

d. Narrated Humaid Ibn Abdulrahman Ibn Auf in the year he performed Hajj, he heard Mu'awiya Ibn Abi Sufyan, who was on the pulpit and was taking a tuft of hair from one of his guards, saying:

"where are your religious learned men? I heard Allah's Messenger forbidding this (false hair) and saying The children of Israel were destroyed when their women started using this" (15)

(Related by Al Bukhari.)

e. Narrated Sa'id Ibn Al-Musayyab:

"Mu'awiya came to Medina for the last time and delivered a sermon. He took out a tuft of hair and said: I thought none used to do this (i.e. use the false hair except Jewish women. The Prophet, may the blessings and peace of Allah be upon him, labelled such practice (i.e. use of false hair), as cheating" (16).

In a version by Muslim, the Hadith runs as follows -

"when this act (adding of artificial hair) reached Allah's Messenger, may the blessings and peace of Allah be upon him, he named it as cheating" (17).

In another account by Muslim, he (Sa'id Ibn Al-Mu'sayyab) also reported:

"that Mu'awiya said one day: should I narrate to you the evil make-up. Allah's Prophet forbade cheating. It was during that time a person came with a staff and there was a cloth on its head, whereupon Mu'awiya said: Behold, that is cheating. Qatada said: This implies how women artificially increase their hair with the help of rags" (18).

f. Abu Hurraira, may Allah be pleased with him narrated (that the Prophet) said:

"Allah has cursed such a woman as lengthens (her or someone else's) hair artificially or gets it lengthened and also one who tattoos (herself or someone else) or gets herself tattooed" (19).

g. Muslim related from Abu-Al-Zubair who said that he heard Jabir Ibn Abdullah said:

"Allah's prophet, may the blessings and peace of Allah be upon him, reprimanded that a woman should add anything to her head (in the form of artificial hair)" (20).

Basis for Deduction:

«*Wasila*» - which is the word used in the Arabic versions of the foregoing Hadiths is the woman who lengthens a woman's hair by connecting to it hair taken from another woman with the purpose of making it thicker and longer. And the Arabic «*Mustawsila*» is the woman who asks for this to be done to her. (21)

The basis for deduction is that lengthening of hair artificially is impermissible since cursing is not invoked except for the impermissible; and cursing, in point of fact, has the strongest connotation for the impermissible. It is, moreover, an indicator, as some maintained, of great sin (22). Al Nawawi said: «In the Hadith, lengthening of hair is a great sin for cursing the one who practices it» (23).

Legal Ruling of lengthening Using Human Hair:

Hanafite, Malikite, Hanbalite, Zahirite and Shafi'ite jurists agree on the impermissibility of lengthening a woman's hair, for the purpose of beautification and improvement by means of adding human hair, whether it was her hair or her husband's, or of a relative in a degree of consanguinity precluding marriage or another woman's hair on account of generality of the import of Hadiths that forbid artificial lengthening and owing to the fact that use of hair or any other part of a human being is impermissible for reasons of dignity that should not be desecrated. Rather, hair, nails and all other parts of the human body should be buried (24).

Legal Ruling on Artificial Lengthening Using Non-Human Hair:

Jurists' opinions, on the legal consequence of lengthening woman's hair with non-human hair, differ as follows:

1. The Hanafites maintained that lengthening with non-human hair, such as wool, hair of camels and goats and rags, is permissible for there is no cheating in it and because this act does not involve use of human hair. And these two factors are the grounds for impermissibility in their opinion (25).

Hashiyat Ibn Abdeen states: «but permission is only for non-human hair which is used by a woman to lengthen braids. Abu Youssef reportedly maintained this opinion. «Al-Khaniya» stated: There is no objection to adding some hair of camels or goats to her braids and sideburns (26). This is also the opinion of Al-Laith Ibn Sa'ad who deemed allowable lengthening of hair with wool, rags and anything that is not hair (27).

2. The Malikites, Zahirites and Muhammad Ibn Jarir Al-Tabary argued for impermissibility of artificial lengthening (even) with non-human hair such as wool, animal hair and hair of camels or goats (28). «A woman should not artificially lengthen her hair with hair or any other material» Contended Imam Malik (29).

Their opinion was based on the general nature of the previous Hadiths and in particular the Hadith narrated by Jabir, i.e.

> *"Allah's Prophet, may the blessings and peace of Allah be upon him, reprimanded that a woman should add anything to her head (in the form of artificial hair)" (30)*

and also because such a practice indicates fraudulence, gives false idea of abundance of hair and represents change of what Allah, glorified be He, has created.

The Malikites, however, exclude tying up hair with rags and coloured silk threads which do not resemble hair. Such a practice, they argue, is not forbidden for it does not represent artificial lengthening, neither is such a practice meant by «artificial lengthening». Imam Malik said «there is no objection to tying up nape hair with rags for protection. There is no lighter treatment for them» (31).

Judge Eyadh reported that some said the concept of artificial lengthening indicates permissibility of «placing» of hair on the head without ‹‹joining›› it, and thus such an act is then regarded as coloured threads and silk.

Dissatisfied with this argument Al-Qurtubi commented «this is pure Zahirism and abandoning of meaning» (32).

3. The Shafi'ites expatiated upon artificial lengthening with non-human hair. They said: The non-human hair used is either pure or impure.

If it is impure, such as hair taken from a carcass or taken from an animal, whose meat is not to be eaten, while it is alive, it is then impermissible on account of impermissibility of using impure things both during performance of prayers or at any other time.

And if it is pure, legal consequences will be according to the following:

If the woman, whose hair is intended to be lengthened by the non-human hair, is not married, it is, then, impermissible too.

This was affirmed by Al-Darimi, At-Tayib, Al-Baghawi and Al-Yaqoubi.

As for a married woman there are three opinions:

First:

Artificial lengthening is permissible only with husband's permission.

Second:

Artificial lengthening is absolutely impermissible, i.e. even if husband consents.

Third:

It is absolutely permissible, i.e. even if husband does not consent.

The first opinion is the one maintained by Shafi'ites as correct and categorically affirmed by a group of them.

This is as regards material resembling human hair such as hair of camels or goats and wool. But as to materials which do not like human hair, such as coloured silk threads and the like, they are not forbidden, on account of non-existence of fraudulence (33).

4. The Hanbalites view that artificial lengthening is made either with hair or without hair. If with hair, such as hair of goats, it is impermissible, as it is the case with lengthening with human hair, on the basis of previous Hadiths in general and also on account of fraudulence involved. If a woman lengthens her hair (artificially) by means of animal hair, such a kind of lengthening is not permissible, and her prayers are not valid if the hair is impure for, in this case, she will be bearing something impure whilst she is able to avoid it. But if such hair is pure, then her prayers will be valid.

With respect to lengthening with material that is not hair, there is no objection to it provided that such action is resorted to for the need of tightening and tying hair in as far as it is dictated by necessity and, thus, unavoidable.

Ahmad Ibn Muhammad Ibn Hazzm related that Ishaq Ibn Mansour said that he had asked Abu Abdullah-that is Ahmad Ibn Hanbal-"Do you dislike anything used by a woman to (artificially) lengthen her hair?" Whereupon he answered: "Except material that is not hair if it is in the form of a few woolly plaits added to hair just to tie it; there is, then, no objection to them provided they are not many" (34).

As for lengthening with non-hair material unnecessarily, two opinions were reported:

First:

It is forbidden.

Second:

A woman is not to add anything to her head, be it hair, wool plaits (35) or wool on the basis of the previous Hadith narrated by Jabir:

> *"Allah's Prophet, reprimanded that a woman should add anything to her head in the form of artificial hair."*

Viewing the first opinion more acceptable, Ibn Qudama commented: «What is prohibited is apparently linking (artificial) hair to hair for it is a fraudulent act, and also the hair whose purity is doubtful. Any material

other than that is not prohibited for the intended meanings do not exist in them and due to interest gained out of this act of a woman getting adorned for her husband without causing harm. As for the Hadiths forbidding lengthening, they are taken to mean disapprovability». (36)

The choose Opinion for lengthening with Non-Human Hair:

In order to opt for an opinion out of the previously stated ones it is necessary to know the most probable reason for which artificial lengthening has been forbidden. This knowldge can be effected by reviewing jurists viewpoints regarding that meaning and the proofs upon which each group of them has based its opinion, as well as by checking these proofs in order to determine the acceptable opinion.

Reason For Which Lengthening Was Made Impermissible:

Muslim Scholars' opinions regarding reason for forbidding artificial lengthening differ. These opinions are:

1. The Hanafites maintained that it is fraudulence by means of using a human part; and human parts are not usable for man's body has a dignity but rather the hair, nails and all other separable parts must be buried and must not be utilized (37).

2. The Malikites, Zahirites and Muhammad Ibn Jarir Al-Tabary contended that it is fraudulence by means of changing what Allah created: as it is the case when woman's hair is short or paltry, so she resorts to artificial lengthening to make it long or abundant. All this represents changing what Allah created (38).

They based this opinion on the verse

AND SURELY I (IBLIS) WILL LEAD THEM ASTRAY, AND I WILL FILL THEM WITH VAIN DESIRES, AND I WILL COMMAND THEM SO THAT THEY WILL SLIT THE EARS OF THE CATTLE, AND I WILL COMMAND THEM SO THAT THEY WILL ALTER THE CREATION OF ALLAH. AND WHOEVER TAKES SATAN FOR A PATRON, INSTEAD OF ALLAH, SHALL SURELY SUFFER A MAINFEST LOSS (39)

(S4:V119)

Their opinion was predicated on that part of the Hadith in which the prophet cursed the woman who tattooed and the one who made spaces between teeth:

"Changing what Allah created."

3. The Shafi'ites and Hanbalites are of the opinion that the reason for which artificial lengthening has been forbidden is fraudulence in general: whether human hair or any other material is used and whether there is change of creation or not (40). They deduced this from the following:

a. The Hadith narrated bu M'awiya Ibn Abi Sufyan that the Prophet had labelled such a practice

i.e. *"the use of false hair as cheating" (41)*

And Qatada said: this includes how women artificially increase their hair with the help of rags.

b. The previous Hadith narrated by Asma:

"I married my daughter to someone but she became sick and all her hair fell out, and because of that her husband does not like her. May I let her use false hair? On that Allah's Messenger, may the blessings and peace of Allah upon, him, cursed such a woman as artificially lengthening her or someone else's hair or getting her hair lengthened artificially" (42).

Thus the Prophet, may the blessings and peace ofAllah be upon him, forbade artificial lengthening for it represents fraudulence, deception and concealment of a defect in the wife.

The acceptable opinion is that maintained by Shafi'ites and Hanbalites, that the suitable reason for forbidding artificial lengthening is fraudulence by covering a defect as well as deception and falsification, for the Prophet, labelled it cheating for it constitutes fraudulence and deception, and the Prophet, forbade deception by saying:

"he who acted dishonestly towards us is not of us." (43)

And as to the opinion held by the Hanafites that fraudulence is only in using human hair, it is not correct, for fraudulence can also be in using animal or artificial hair or any other material that looks like proper hair. Basing of deduction on the previously stated verse, as Malikites did, is not sound for the Verse indicated change of creation by means of incision and dissection as it is the case with slitting the ears of the cattle, tattooing and the like. And as for the Hadith, it forbade tattooing and making paces between teeth and not artificial lengthening. So if it is to be taken as a reason for impermissibility of tattooing and makes spaces between teeth, it is not correct to be indicated as a cause for impermissibility of

lengthening since the Hadiths that forbade artificial lengthening specified the reason for forbidding it, which is cheating, deception and falsification.

Al-Khattabi said «Women who practice lengthening are those who add artificial hair to other women's in order to lengthen their hair so that it looks as if it were part of the original hair. A woman may be thinhaired or has reddish hair, so she adds black hair to her head and this is cheating and falsification and therefore it is forbidden. Woolly plaits added to hair have, however, been given exceptional permission by the learned, since they do not give a false idea, and whoever looks at them does not doubt that they are artificial (44)» And since the cause for forbidding lengthening is fraudulence and cheating, then the chosen opinion for lengthening with non-human hair is as follows:

1. If material used in artificial lengthening looks like natural hair so that whoever looks at it thinks it is so, then artificial lengthening is impermissible whether such material is hair, wool, hair of goats or camels, synthetic threads or else, owing to the fact that the case for impermissibility of artificial lengthening is realized.

2. If material utilized in artificial lengthening does not look like natural hair so that whoever sees it knows, at first sight, that it is not natural, artificial lengthening is, then, not impermissible whether it is hair, wool, hair of goats or camels or woolly plaits for it does not constitute cause for impermissibility i.e. fraudulence.

3. Plaiting hair with coloured rags other materials which are plainly not part of it, is not considered artificial lengthening and accordingly is not forbidden.

Second: Shaving of woman's head.

Muslim scholars consensus agrees that women are not required to shave their heads in pilgrimage and that; they are only to shorten hair. The majority of Hanafite, Shafi'ite and Hanbalite jurists deemed shaving disliked for women except when it is necessary, such as in case of illness, for it is departure from what is natural for her and change of innate beauty, the fact which leads to disfigurement. They deemed it impermissible if women do so in order to imitate men (45). They based their deduction on the following Hadiths:

1. Abu Mussa said:

"I have no concern with one with whom the Messenger of

Allah, may the blessings and peace of Allah be upon him, has no concern. Verily the Messenger of Allah, has no concern with that woman who wails loudly (46) shaves her hair and tears her garment in grief" (47) & (48).

(Related by Imam Muslim)

Women used to shave their heads, at time of mourning, as an expression of grief, and the Prophet has forbidden that.

2. Aisha, reported that:

"The Prophet forbade that a woman should shave her head" (49).

Related by Al-Termidhi who said:

"The learned maintain this, i.e. they view that women should not shave, and that they should only cut hair short" (50).

3. Ibn Abbas narrated that the Messenger of Allah said:

"It is not necessary for women to shave. They are only to cut hair short" (51).

(Related by Abu-Da'wud)

Malikites and Zahirites are of the opinion that shaving is absolutely impermissible, be it for change of innate beauty or imitation of men, on the basis of previous Hadiths (52).

The acceptable opinion is the opinion maintained by Malikites and Zahirities, i.e. impermissibility of shaving for women, for disfigurement by means of change of innate beauty is forbidden as is imitation of men. Therefore, it is impermissibile for a woman to shave hair hair, except when it is necessary whether the intention is disfigurement or imitation of men or of unbelieving women at time of mourning.

Third: Shaving Head in the Form of «Gazz» (i.e. a close hair cut).

The Ulama consensusly agree upon dislikedness of «gazz», for both men and women, except for the sake of medical treatment and the like (53), on the basis of the Hadith reported by Ibn Omar, that:

"Allah's Messenger, forbade «gazz», Nafi was asked: What is «gazz»? He said; this means having part of the boy's head shaved and leaving a part unshaven" (54)

(Related by Imam Muslim)

And also on the basis of the Hadith reported by Ibn Omar, too, that:

The prophet saw a boy with part of his hair shaved and the other part left unshaven, and forbade them (i.e. people) to do that and said:

"shave it all or leave it all" (55).

(Related by Abu Da'wud)

Reason For Forbidding "gazz":

Scholars, opinions, regarding reason for forbidding «gazz» differ owing to diversity in the following (56):

First:

Shaving of parts of head here and there, in the manner redembling scattered clouds.

Second:

Shaving of the middle of the head leaving the sides unshaven as deacons do.

Third:

Shaving of the sides of the head and leaving the middle unshaven as done many of the rabble and the riffraff.

Fourth:

Shaving of the front of the head leaving the head leaving the back unshaven.

The first type is disliked for it is harmful and due to the fact that it constitutes injustice of man towards himself.

Ibn Taimiya said «This indicates perfect love, on the part of Allah and his Messenger, for justice; for it is required even in matters concerning behaviour of man towards himself. Thus justice demands of man not to shave part of head leaving the other part unshaven, for thus the head is wronged when part of it is coverd and the other is left unclad. Similarly man is forbidden to sit between the sun and the shadow for this represents unfairness towards part of the body. Also similarly one is forbidden to walk with one of the feet unshoed, rather he should shoe both of them or leave both of them unshoed. (57)»

The second type is disliked for it constitutes imitation of the people of the Book, Christians and Jews. Jews as well as deacons used to practice it. Al-Hakim Al-Termidhi said, «This used to be a practice of priests who are worse than lay Christians. The Messenger of Allah, may the blessings and peace of Allah be upon him, forbade imitation of those whom I have described (58).

The third type is disliked for it represents imitation of the rabble the riffraff, the evil and the corrupt. It is how the evil and the immoral wear their hair. (59)

The fourth type is disliked for it constitutes disfigurement that is loathed by minds and hearts. (60)

Fourth: Plucking of White Hair And Treatment For Prematurely Whitening Hair.

Jurists' opinions concur as to permissibility of dying white hair, for men and women, with nonblackening substances such as henna, kutm and sufra (various substances for dying hair) Their opinions concured also on dislikedness of plucking white hair from places whose hair is not required to be removed such as head and beard. (61).

The Malikites argued: plucking white hair is disliked, and if it is done with the intention of cheating women, it is then more forbidden (62,63).

Al-Shirbini said «plucking white hair is disliked. Ibn Al-Rif'a, however, reported that it was prohibited. This opinion is stated in ((Al-Um)). He wrote in ((Al-Majmou')): «if it was said that it (i.e. plucking of white hair) was prohibited, such will not be an extreme sort of opinion» (64).

They based deduction that plucking of white hair is disliked on the following Hadiths:

1. Abu Da'wud narrated on the authority of Amr Ibn Shu'eib from his father from his gradfather who said quoting the Messenger of Allah:

> *"Do not pluck white hair. The hair of every Muslim which whitens in Islam (i.e. while he is a Muslim) will be a light for him on the Day of Judgement" (65).*

This Hadith is given by Ahmad as:

> *"Allah will raise him, for it, to a higher degree, a vice of his will be expunged and Allah will add a virtue for it, to his credit" (66).*

2. Al-Termidhi related on the authority of Amr Ibn Shu'eib from his father from his grandfather who said that:

> *"The prophet, may the blessings and peace of Allah be upon him, forbade plucking of white hair, and said: It is the light of the Muslim" (67).*

Reason For Forbidding Plucking:

Plucking of white hair is forbidden because it constitutes change of what is naturally created, unlike dying which does not delude the observer (68), not to mention fraudulence, deception and falsification.

Treatment of hair, by applying sulphur or any other substance to it in order to whiten it prematurely, was deemed disliked by Shafi'ites for such practice represents fraudulence, and because it is detrimental (to hair) (69).

Second Question

Beautification of Hair On The Face By «nemas» (i.e. Plucking hair out with thread)

Face, for the woman, is the focus of beauty. Woman's charms are concentrated on it and it is what the husband mostly enjoys. Hence Allah, glorified be He, created it void of hair except for hair of eyebrows and eyelashes. Hair of eyebrows is for beauty and protection of eyes from what comes down from the head. It is made in this amount for if it is less, the advantage of beauty and protection will be gone; and if it is more it will cover the eye, cause harm to it and limits sight.

As for hair of eyelashes, it constitutes beauty as well as protection for the pupil of the eye(70). I am going to discuss, in this issue, the provision for *«nemas»* (i.e. plucking of hair on the forehead).

Jurists consensusly agree upon impermissibility of *nemas* (71), on the basis of relevant Hadiths:

> *1. Abdullah Ibn Mas'oud reported, Allah cursed those women who tattoo and who ask to be tattooed, those who get their hair plucked out from their faces and those who make spaces between their teeth for beautification changing*

what Allah created. This news reached a woman of the tribe of Asad who was called Umm Ya'qub and she used to recite the Munificent Qur'an. She came to him and said: What is this new that has reached me from you that you curse those women who have themselves tattoed, the women who pluck hair from their faces and for beautification changing what Allah created?. Thereupon Abdullah said: Should I not curse one upon whom Allah's Messenger, invoked curse and that is in the Book also. Thereupon that women said: I read the Qur'an from cover to cover, I did not find that in it. Whereupon he said: If you had read (thoroughly) you would have definitely found this in that (as) Allah, the Mighty and Majestic, has said:

WHAT ALLAH'S MESSENGER BRINGS FOR YOU ACCEPT THAT, AND WHAT HE HAS FORBIDDEN YOU, REFRAIN FROM THAT (72).

That woman said: I find this thing in your wife even now. Thereupon he said: Go and see her. She reported: I went to the wife of Abdullah but found nothing of this sort in her. She came back to him and said: I have not seen anything, whereupon he said: Had there been anything like it in her. I would have never slept with her in the bed (73).

(Related by Al-Bukhari and Muslim)

2.Abu Da'wud related that Ibn Abbas said:

"Cursed is the woman who adds false hair and the woman who asks for it, the woman who plucks hair from face and the one who asks that hair be plucked from her face and the woman who tattoos and the one who asks for it without there being a disease" (74).

The preceding two Hadiths were used as basis for deduction owing to the fact that the Prophet, may the blessings and peace of Allah be upon him, has cursed the woman who practices «*nemas*», and curse is not invoked on something that is not prohibited(75) Jurists' opinion differ, as shown in the following, regarding the nature of «*nemas*» that is prohibited:

1. The Hanafites maintained that the prohibited «*nemas*» is that done by the woman to display her charms and adorn for people other than husband as well as that done without justifiable need or necessi-

ty, for plucking such hair with tweezers is harmful. *«Nemas»* done in order to adorn for husband, they argue, is not prohibited; if there is hair on her face that makes her husband take aversion to her, she can remove such as beard, moustache or hair below the lower lip (76), it is permissibile, even recommended, for her to remove it. This is not included in forbidden *«nemas»*. It is also allowable for her to take from the hair of the eyebrows and from that which grows on the face unless she means, by doing that, to imitate the effeminate (77).

2. The Malikites' opinion is that the prohibited «nemas» is that in which hair is plucked from face, for it represents fraudulence by means of changing what Allah, glorified be He, created. Therefore, women are not allowed to pull out hair with thread (78).

3. The Shafi'ites argued that the prohibited *«nemas»* is the act of taking from the hair of the eyebrows in order to thin them, so that they look like bows or crescents, for beautification provided such an act is done without permission of husband.

Accordingly, if the wife does this with permission of her husband, it is then allowable, for as he wants her to get adorned for him, he therefore, gives her permission.

Removal of beard, moustache and hair of the lower lip by the woman, through plucking or shaving, are excluded from prohibited *«nemas»*, whether she is married or not. This act is even recommended for her and it is not included in forbidden *«nemas»*, for what is forbidden is taking of hair off eyebrows and ends of the face. The Shafi'ites saw nothing wrong with trimming too long eyebrows by plucking some of them. Al-Nawawi however, deeming this disliked, said, «And it should be disliked, for it is change of what Allah has created, and nothing has been proved towards permissibility of such a practice.» (79).

4. The Hanbalites have three viewpoints regarding prohibited *«nemas»*. They are:

First:

What was stated by Imam Ahmad that the prohibited *«nemas»* is plucking hair from the face, and that there is no objection to shaving it, for the traditions specified plucking only.

Al Warraq narrated that Mahanna told him that he had asked Abu

Abdullah - indicating Ahmad Ibn Hanbal about shaving, whereupon he said: «There is no objection to it for women». Then when he had asked him about plucking, he answered: «I deem it disliked for both men and women». Ahmad used to take (some hair) off his eye-brows and cheeks (80).

Second:

This is a standpoint of the Hanbalites. Sheikh Abdulwahab Ibn Mubark Al-Anmati said: If the woman plucks hair from the face for the sake or her husband after he has seen her, there is, then, no objection. This act is objectionable only if done before he sees her, for it is fraudulence (81).

Third:

What Abdulrahman Ibn Al-Juzzi maintained that the Hadith concerning the woman who practices *«nemas»* is taken to indicate fraudulence or immoral women, and accordingly the prohibited *«nemas»* is that done by a woman with the intention of fraudulence or in order to imitate immoral women (82).

It is allowable for the woman, on the basis of what is previously stated, to shave her beard and moustache (83).

5. Al-Tabari and Ibn Hazm, the Zahirite, argued that the prohibited *«nemas»* is plucking of hair from the face owing to the fact that such an act constitutes change of creation of Allah, and consequently it is not allowable for the woman to change, by increasing or decreasing, the form in which Allah created her for the sake of beautification neither for husband nor for anyone else; as it is the case with one whose eyebrows are joined so she plucks the joining part to give a false idea that they are (originally) separated, or vice versa. It is, likewise, not allowable for her to shave her beard, the hair below the lower lip or moustache for this is change of creation (84).

Chosen Meaning for prohibited *«nemas»*:

After reviewing the jurists' opinions, regarding the kind of *«nemas»* that is prohibited, it is clear that what they have differed about is the hair which the woman is allowed to pull out with thread; is it the hair that grows on the face or hair of the eyebrows?

The Hadiths do not specify this, and therefore it is inevitable to

make recourse to linguistics in order to explain this. (The Arabic versions of) the Hadith narrated by Ibn Mas'oud stated the word *«mutanamissat»* which is the plural of *«mutanamissa»* that is a woman who seeks that *«tanamus»* is done for her. And *«tanamus»* is a stronger form of *«nemas»* indicating «undue» and «excessive» removal of hair from the face. Excessive removal of hair from the face can be effected only in the eyebrows since they are the natural place for appearance of hair on the woman's face.

Therefore, if the woman plucks hair of the eyebrows for beautification excessively; i.e. by, for instance, removing them altogether or by thinning them till they are like bows or crescents, this is, then, the *«nemas»* that is forbidden. This argument is consolidated by what is stated in the Sunnan of Abu Da'wud. After reporting the earlier Hadith narrated by Ibn Abbas, he said:

> *"The «namisa» is: the woman who trims brows until they are thin" (85).*

Consequently, removal of beard, moustache and the hair below the lower lip on the woman by means of plucking or shaving, is allowable, for this is not included in the prohibited *«nemas»* as it is maintained by the majority of jurists. Many jurists considered appearance of beard and moustache in the woman a blemish and defect, and so there is no indemnity to pay for whoever (forcibly) rids her of them by plucking or removing for, in this way, she will have rid herself of a blemish (86).

Inexpressive trimming of brows, by removal of excess hair that is away from the straight course that brows take, is excluded from prohibited «nemas», for there is neither fraudulence nor change of creation of Allah in it.

Rationale Behind Prohibition of *«nemas»:*

The Messenger of Allah, forbade *«nemas»* for it constitutes change of the inborn form of eyebrows either by removal or thinning as the Hadith narrated by Ibn Mas'oud indicates;

> *"Changing what Allah has created".*

So, it is not allowable for a woman to remove the eyebrows altogether and replace artificial eyebrows for them, for this act represents change of the original creation besides serious detriments that

result from application of the chemical substance as Dr. Wahba Ahmad Hassan says: «Eyebrow pencils and other kinds of skin make-up have a detrimental effect; they are made up from compounds of heavy metals such as lead and mercury dissolved in fatty substances such as cocoa oil. The colouring substances, also, include petroleum extracts all of which are various kinds of oxide that are detrimental to the skin. Absorption of these substances through skin pores causes inflammation and allergy. And if such substances are kept applied to the skin continuously, the blood, liver and kidneys will be adversely affected (87)».

Third Question

Beautification of Hair by Surgery

Plastic surgery operations for treatment of growth of hair by transplantation or removal have emerged in our age. These are new matters the legal consequences of which have not been discussed by jurists of former times. Then what should the legal consequences of such matters be?

It is necessary, before answering this question, to set limits that should be observed in respect of beautification of hair, so that they can be landmarks for knowing the legal consequence of the Sharia on these new matters, then judgement can be given on them.

First: Limits to Observe in Beautification of Hair.

From our study of provisions concerning beautification of hair of the head and hair on the face, the following limits are deduced:

1. It should not consitute fraudulence, deception or falsification.

2. It should not represent change of inborn form.

3. Impure substances or materials should not be utilized.

4. It should not be done for the purpose of imitation by either of the two sexes (male or female) of the other.

5. It should not be done for the purpose of imitating the unbelievers or the evil and the immoral.

6. It should not result in greater harm.

Second: Sharia Provisions for New Plastic Surgery Operations

On the basis of the limits previously explained, the all-embracing legal consequence for surgical operations concerning beautification of hair is permissibility provided that the above limits and conditions are observed.

The detailed provisions for each kind of operation depend on the manner in which such a surgical operation is performed as well as on the Sharia characterization. Among such operations are: transplantation of hair on the head so that it grows naturally, treatment of white hair on the child's or the young man's head, treatment of dense hair all over the face, treatment of beard and moustache on the woman's head and treatment of hair of beard and moustache on man's face.

1. Transplantation of Hair On the Head So That It Grows Naturally:

Surgical treatment of hair by means of performing a hair transplant on the head so that it grows naturally is allowable for there is no fraudulance in it; rather it is a means of reverting to the original creation to which man is disposed (88).

2. Treatment of White Hair On Child's Head:

Man's hair whitens for two reasons one of which is the natural change that is due to old age, and the other is abnormal, eg. that which takes place immediately after dehydrating diseases (89).

White hair, as it is earlier explained, is not permissible to be plucked, for such an act constitutes fraudulance and change of creation. But white hair in a child or a young man is due to disease, and therefore it is permissible to treat it by means of operation, for there is no fraudulence or change of original creation.

3. Removal of Dense Hair Covering Children's Face By Operation:

A phenomenon that has recently been witnessed by the world and that has troubled doctors is the dense hair, 2 to 10 cms long, that covers young children's bodies - including the face - The child's face looks like that of a wolf - as it is shown in the picture. Is it permissible to treat such hair?

Presence of this hair all over human body is not normal. It is due to malfunction of hormones that govern growth of hair and regulation of its stages. Dr. Youssef Muhammad Al-Bilbisi says, «This phe-

nomenon, which is represented in abnormally dense growth of hair, is, I think, attributable to deficiency of hormones connected with stages, manner and nature of hair growth» (90).

Dr. Ameen Al-Juhari says «Premature appearance of hair in male and female children is due to malfunction of hormones, produced by the adrenals which cause appearance of hair in men and changes of voice in boys and expedite appearance of virility symptoms in children, the first of which is appearance of dense hair (91).

Dr. Ali Al-Takmaji - a dermatologist and a venereologist - says «Drugs are responsible for such deformities in embryos, in addition to cortisone which causes dense growth of hair along with other complications (92).

Plastic surgery, in this case, is done by uprooting hair through electricity or electrolysis as Dr. Hatchings - a plastic surgery specialist - says «Cure of this phenomenon is not possible at the present time except through means of plastic surgery. I recommend uprooting by means of an electric current or electrolysis, for removal of the epidermis with hair is, currently, impossible, so is grafting of new epidermis taken from other parts of the body, for the outer skin of the whole body is covered with dense hair (93)».

Accordingly, the legal consequence for this operation is permissibility, unless it should cause a greater harm to the child, for it constitutes reversion to original creation.

4. Treatment of Beard and Moustache On Woman's Face:

Performance of surgical operation for removal of beard and moustache on the woman's face is allowable, unless it should result in a greater harm, for there is neither fraudulence nor change or original creation.

5. Treatment of Beard and Moustache on Men's Face:

Removal of man's beard and moustache by means of surgical operation, so that he should look like women, is not permissible for it represents change of original creation and imitation of women.

Annotations

1. Surat Al-Aaraf, Verses 31 and 32.
2. "Sahih Muslim bi Sharh Al-Nawawi" 2/89.
3. Related by Al-Termidhi in his «sahih», «Sahih Al-Termidhi bi Sharh Ibn Al-Arabi» 7/220. Al-Termidhi said: «This is an approved and sound Hadith.
4. Related by Abu Da'wud, Al-Termidhi and Al-Nesa'i and termed as an approved Hadith by Al-Termidhi and others, "Jami Al-Usoul", by Ibn Al-Atheer 4/752.
5. Al-Haskafi: "Al-Dur Al-Mokhtar Sharh Tanweer Al-Absar ma'Rad Al-Mehtar" By Ibn Abdeen 6/373, Ibn Nujaim: "Al-Bahr Al-Ra'iq Sharh Kenz Al-Daqaiq" 8/233, Ibn Juzey: "Qwaneen Al-Ahkam Al Fiqhiyah›› p. 482, Al-Baji: "Al-Muntaqa" 7/266, "Al-Zarqani's ala Al-Muwata" 4/335, Al-Qurtubi: "Al-Jami li Ahkam Al-Qur'an" 5/394, Ash-Safi'i: "Al-Um" 1/54, Al-Nawawi: "Al-Majmou" 3/133, "Rawdat Al-Talibeen" 1/276, "Sahih Muslim bi Sharh Al-Nawawi": 14/103, Al Ramli: "Nihayat Al-Muhtaj" 2/24, Al-Shirbini: "Mughni Al-Muhtay" 1/191, Hashiyat Al-Bujjeirmy: 1/239, Hashiyat Al-Jamal 1/418, Ibn Qudama: "Al-Mughni" 1/93, Al-Bahouti "Kashshaf Al-Qinaa"': 1/81, Al-Mirdawi: "Al-Inssaf" 1/125, Ahmad Ibn Hanbal: "Ahkam Al-Nisa"' p. 11 Ibn-Al-Jawzi: "Ahkam Al-Nisa"' p. 86, Ibn Hazm: "Al-Muhhala" 11/298.
6. "Sahih Al-Bukhari" 7/62.
7. "Sahih Muslim" 3/1677.
8. "Sahih Muslim" 3/1677.
9. "Sahih Al Bukhari" 7/62.
10. "Sahih Al Bukhari" 7/62.
11. "Sahih Al Bukhari" 7/63.
12. "Sahih Muslim" 3/1676.
13. «Sahih Al Bukhari» 7/62.
14. «Sahih Muslim» 3/1677.
15. «Sahih Al Bukhari» 7/62, «Sahih Muslim» 3/1679.

16. «Sahih Al Bukhari» 7/63.
17. «Sahih Muslim» 3/1680.
18. «Sahih Muslim» 3/1680.
19. «Sahih Al Bukhari» 7/62.
20. «Sahih Muslim» 3/1679.
21. See: Ibn Hajar: «Fath Al Bari» 10/376, Al Nawawy: "Sharh Sahih Muslim" 14/103, Al-Shukani "Nail Al-Awtar" 6/215, Ibn Al-Arabi: "Sharh Sunnan Al-Termidhi" 7/273, Al-San'ani: "Subul Al-Salam" 3/144, Al-Manawi: «Faid Al-Qadeer» 5/268, Muhammad Sedeeq Khan: "Husn Al-Uswah bi ma Thabat min Allah wa Rasouluh li Al-Niswah" p. 368.
22. Ibn Hajar: "Fath Al-Bari" 10/377, Al-Shukani: «Nail: Al-Awtar» 6/216.
23. Al-Nawawi: "Sharh Sahih Muslim" 4/104.
24. See the references I indicated when mentioning provisions for artificial lengthening in general.
25. Hashiyat Ibn Abdeen 3/373, "Al-Fatawa Al-Hindiya" 5/358.
26. Hashiyat Ibn Abdeen 3/373.
27. Al-Nawawi: "Al-Majmou" 3/135, Al-Qurtubi "Al-Jami li Ahkam Al-Qur'an" 5/394, Ibn Hajar: "Fath Al Bari" 10/375.
28. Al-Baji: "Al Muntaqa" 7/266, Sharh Al-Zarqani ala Al-Muwata 4/335. Ibn Juzey: "Qawaneen Al-Ahkam Al-Fiqhya" p. 482.
29. Al-Baji: "Al-Muntaqa" 7/266, Ibn Hazm, "Al-Muhalla" 11/298.
30. Ascription of this Hadith has already been mentioned at the beginning of this question.
31. Al-Baji: "Al-Muntaqa" 7/267.
32. Al-Qurtubi "Al-Jami li Ahkam Al-Qur'an"5/394.
33. Al-Nawawi: "Al-Majmou" 3/135, "Rawdat Al-Talibeen" 1/276, Hashayat Al-Bujeirmi 1/239, Al Ramli: "Nihayat Al Muhtaj" 2/24, Al-Shirbini: "Mughni Al-Muhtaj" 1/191, Hashiyat Al Jamal 1/418.
34. Ahmad Ibn Hanbal: "Ahkam Al-Nisa'" p. 14.

35. The Arabic word that stands for the woolly plaits added to hair of the head is «qaramil».

37. "Al-Fatawa Al-Hindiya" 5/358, "Hashiyat Ibn Abdeen" 3/373.

38. Al-Baji: "Al-Muntaqa" 7/267, "Sharh Al-Zarqani ala Al- Muwata" 4/335, Ibn Hazm: "Al-Muhalla" 11/298.

39. Verse 119 of Surat Al-Nisa'.

40. Al-Nawawi: "Al-Majmou" 3/135, Al-Ramli: "Nihayat Al-Muhtaj" 2/24 Al-Shirbini: "Mughni Al Muhtaj" 1/191, Ibn Qudama: "Al-Mughni" 1/93, Al Bahouti: "Kashaf Al-Qina'" 1/81.

41. Sahih Al Bukhari 7/63.

42. Sahih Al Bukhari 7/62.

43. Sahih Muslim 1/99.

44. Al-Khattabi: "Maalim Al-Sunan" 4/209.

45. "Al-Fatawa Al-Bazzaziya" 3/371, Al-Nawawi: "Al-Majmou" 8/154, Ahmad Ibn Hanbal: "Ahkam Al-Nisa'" p. 15, Ibn Qudama: "Al-Mughni" 3/439, Ibn Muflih: "Al-Mubdi'" 1/105, Ibn Abdulhadi: Dhawu Al-Ifham an Al-Kutub Al-Kathirah fi Al Ahkam)) p. 37.

46. Al-Saleqa: That woman who wails loudly in grief.

47. Al-Shaqqa: That woman who tears her garment in grief.

48. Sahih Muslim 1/100.

49. Sunan Al-Termidhi: 3/257, Al-Haythami: "Majma Al-Zawaaid" 3/263. He said: Related by Al-Bazzaz, and among the transmitters is Mu'alla Ibn Abdulrahman who has confessed forging (Hadiths). Ibn Addi said: I hope that he is not objectionable.

50. Sunan Al-Termidhi 3/257.

51. Sunan Abu Da'wud 2/203, Sunan Addarqatni 2/271, Al-Shukani: "Nail Al-Awtar" 5/80. He said: Also quoted by Al-Tabarani. Ascription was termed as «firm» by Al-Bukhari in «Al Tarikh» and by Abu Hatim in «Al-Illal». Al-Hafiz termed it as «approved» whereas Ibn Al-Qattan Labelled it as «defective» but was, refutably answered by Ibn Al-Mawaq.

52. Al-Baji: "Al-Muntaqa" 3/32, Al Kashawai: "Ashal Al Maddarik" 1/471, Ibn Hazm "Al-Muhalla" 11/297.

53. «Al-Fatawa Al-Hindiya» 1/357, Ibn Juzey "Qwaneen Al-Ahkam Al-Fiqhiya" p. 482, Al Baji: "Al-Muntaqa" 10/363, Al Ayni: "Omdat Al-Qari" 22/57, Al Nawawi: Sharh Sahih Muslim 14/100, Al-Bahouti: "Kashshaf Qina'" 1/79, Ibn Muflih: "Al-Mubdi" 1/105 Al-Mirdawi: "Al-Insaf" 1/127.

54. Sahih Muslim 1657, Sunan Abu Da'wud 4/83.

55. Sunan Abu Da'wud 4/83.

56. Ibn Al-Qayim: "Tuhffat Al-Mawdoud Bi Ahkam Al-Mawloud" p. 59.

57. Ibid.

58. Al-Hakeem Al-Termidhi: (Nawader. Al-Usool) p. 9.

59. Al-Nawawi: Sharh Sahih Muslim 14/105 Al-Ayni "Omdat Al-Qari'" 22/57.

60. Al-Dahlawi: "Hujat Allah Al-Baligha" 2/832.

61. Al-Fattawa Al-Hinddiya 5/359, Al-Ayni: "Omadat Al-Qari" 22/51, Ibn Juzey: "Qwaneen Al-Ahkam Al Fiqhiya". P. 482, Al-Kashnawi: "Ashal Madarik" 3/364, Al-Baji "Al-Muntaqa" 7/268, Al-Nawawi: "Al Minhaj ma' Nihayat Al-Muhtaj" 2/25, "Hashiyat Al-Bijeirmi" 1/239, "Hashiyat Qalyoubi" 1/183, Al-Shirbini: "Mughni Al-Muhtaj" 1/191, Ibn Muflih: "Al-Mubdi" 1/105, Al-Badouti: "Kashshaf Qina'" 1/77.

62. «Al-Fattawa Al-Hinddiya» 5/359, Al-Ayny: «Omddat al Qary» 22/51.

63. Ibn Jauzi: "Qwaneen Al-Ahkam Al-Fiqhiya" p. 482.

64. Al-Shirbini: «Mughni Al-Muhtaj» 1/191.

65. «Sunnan Abu Da'wud» 4/85.

66. «Musnad Al Imam Ahmad» 2/207.

67. «Sunnan Al-Termidhi» 5/125. He termed the Hadith as «approved».

68. Ibn Hajar: «Fath al Bari» 10/355.

69. Al-Nawawi: «Al-Minhaj ma' Nihayyat Al-Muhtaj» 8/149.

70. Extracted with adaptation from Ibn Al-Qayim's «Al-Tibyan fi Aqsam Al-Qur'an», pp. 305-317.

71. Hashiyat Ibn Abdeen 6/373, Ibn Juzey: «Qwaneen Al-Ahkam Al-Fiqhiya» p. 482, Al-Nawawi: "Al-Majmou" 3/135, Al-Shirbini: "Mughni

Al-Muhtaj" 1/191, «Hashiyat Al-Jamal» 1/418, Ahmad Ibn Hanbal: "Ahkam Al-Nissa" p. 16, Ibn Qudama: "Al-Mughni" 1/94, Ibn Muflih: "Al-Mubdi" 1/106, Al-Bahouti: "Kashshaf Al-Qina'" 1/81, Ibn Hazm: "Al-Muhalla" 11/298, Al-Mahdi: "Al-Bahr Al-Zakher" 5/366, Al-Shukani: "Al-Sail Al-Jarrar" 4/132.

72. Verse 7: Surat Al-Hashr.

73. «Sahih Al-Bukhari» 6/58, 59, 7/61, Sahih Muslim 3/1678.

74. «Sunan Abu Da'wud» 4/78.

75. Al-Shukani: "Nail Al-Awtar" 6/216-217.

76. Al-Anfaqa: This is the Arabic word for hair that grows beneath lower lip.

77. Hashiyat Ibn Abdeen 6/373, "Al-Bahr Al-Ra'iq" 8/233.

78. Ibn Jawzi: "Qwaneen Al-Ahkam" 482, Al-Qurtubi "Aj-Jami li Ahkam Al-Qur'an" 5/392.

79. Al-Nawawi: "Al-Majmou" 3/135, "Al-Minhaj ma Nihayat Al Muhtaj" 2/25, Al-Shirbini "Mughni Al-Muhtaj" 1/191, Hashiyat Al-Jamal 1/418.

80. Ahmad Ibn Ahmad: "Ahkam Al-Nisa'" p. 16, Ibn Qudama: "Al-Mughni" 1/94, Ibn Muflih, "Al-Mubdi" 1/106, Al-Bahouti: Kashshaf Al-Qina')) 1/81-82.

81. Ahmad Ibn Hanbal "Ahkam Al-Nisa" p. 16.

82. Ibn Al-Juzey: "Ahkam Al-Nisa'" p. 76, Al-Mirddawi: "Al-Inssaf" 1/126.

83. Al Bahouti "Kashshaf Al Qina" 1/82.

84. Al Nawawi: Sharh Sahih Muslim 14/106, Ibn Hajar "Fath al-Bari" 10/377, Al-Ayni: "Omdat Al-Qari" 19/225, Al-Shukani: "Nail Al-Awtar" 6/127, Al-Qurtubi "Al-Jami li Ahkam Al-Qur'an" 5/395.

85. Sunan Abu Da'wud 4/78.

86. Al-Haddadi: "Al-Jawhara Al-Nayyira" 2/162.

87. Anwar Al-Jindi: "The Muslim Woman in the Face of Challenges" p. 66.

88. Dr. Mahamoud As Sartawi: Provision for Anatomy and Plastic Surgery in the Sharia - Dirassat (studies) Journal.

Third Issue 1984, p. 149.

89. Ibn Al-Qayyim: "Al-Tibyan fi Aqsam Al-Qur'an" p. 321. Dr. Sabri Al-Qabbani: (your Beauty; My Lady) p. 87.

90. The Jordanian Newspaper «Sheihan», on 7/3/1987, p. 14.

91. Ibid.

92. Ibid.

93. Ibid.

SECOND CHAPTER

Beautification of Body With Indelible Colours And Marks

Several types of surgical operations are resorted to for beautification of the body with indelible colours and marks; some of these operations are old and others are new. I'm going to discuss, in this issue, the provisions for such operations.

First Question
Old Surgical Operations

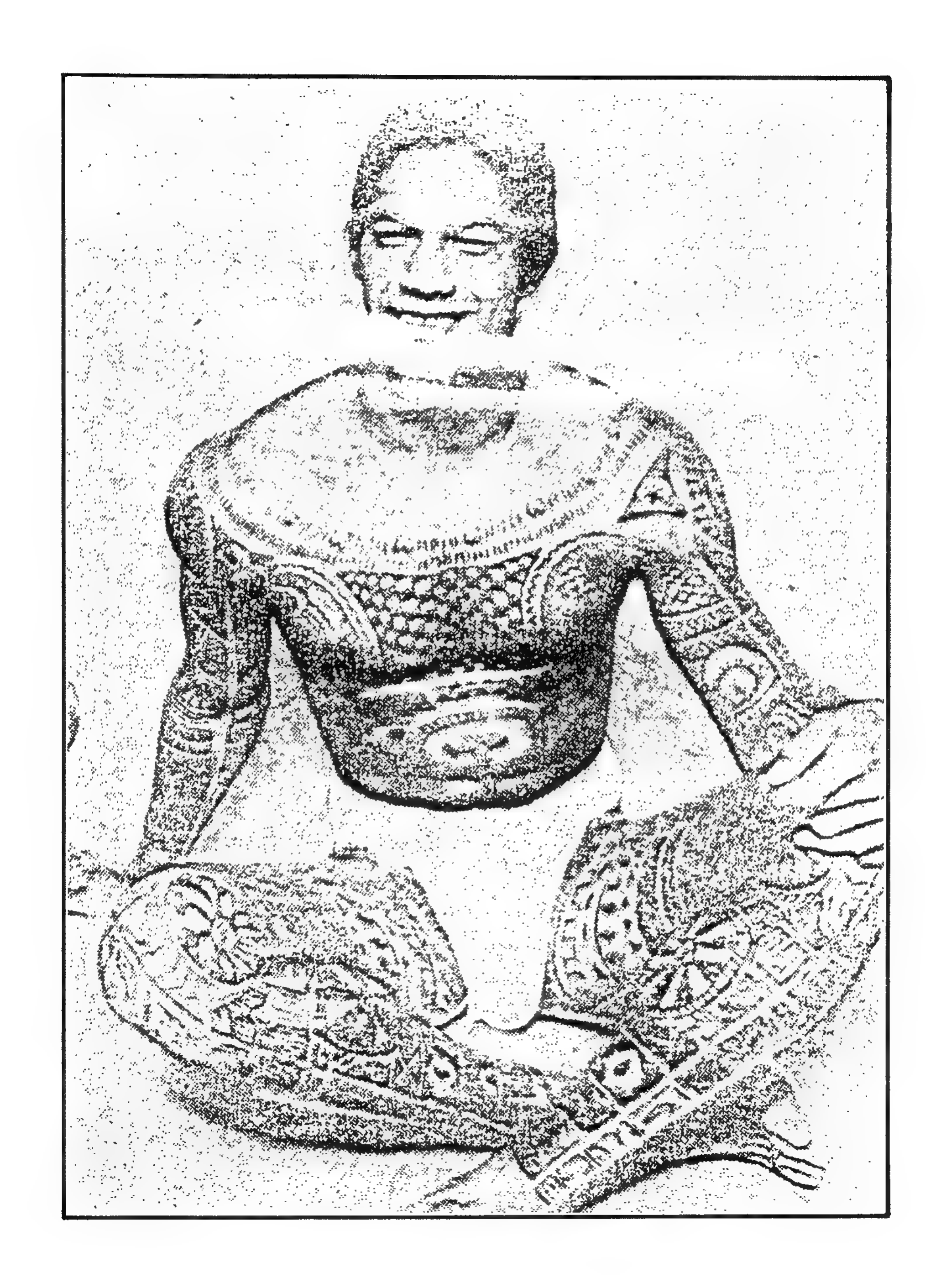
I will discuss in this question, three old operations. They are: tattooing, cauterization (or branding) and abrasion.

First: Tattooing

Linguistically speaking, a «tattoo» is a pattern, picture or message put on the skin. In Arabic, the corresponding word *«washm»* means «mark» (1).

Technically «tattooing» or *«washm»* is the act of pricking skin with a pin until blood comes out then pouring coloured dyes in, such as kohl, nawra (kind of pigment) or ink. The part of the skin thus treated becomes green on blue (2).

People are artful as far as tattooing is concerned; some of them would mark on the body a picture of an animal such a lion or sparrow, some others would tattoo hearts or name of the sweetheart. Some women tattoo their lips with indelible green dye. Tattooing is not restricted to certain parts of the body. It has, nowadays, become a means for adorning the entire body, as shown in the picture of this man who has tattooed the whole of the body and borne excruciating pains to attain this end. He has subjected himself to pricking with pins six hours daily for four years.



Some girls, in Europe, tattoo picture on various parts of the body then these skin pointings are removed and tanned then sold at very high prices, for it is part of a human body. They are kept as rare artistic paintings (3).

Muslim scholars' consensus agreed upon impermissibility of tattooing for both the woman who tattoos and the one who is willingly tattooed (4). A minor girl, therefore, is not held sinful if she is tattooed for not being legally competent. So is one who is tattooed as a result of an accident, as when the body is scraped against asphalt and the black substance gets beneath the skin, or when a bomb explodes and smoke and powder gets under the skin. The same rule is also true for one who is tattooed for medical treatment. What supports this exception is the Hadith narrated by Ibn Abbas:

"and the woman who gets herself tattooed without (having) a disease" (5).

Ibn Hajar said «This Hadith indicates that the woman who does not do it intentionally but only for the sake of cure, for instance, and consequently has a tattoo as a result of treatment, is not included in the reprimand (6)».

Ulama deduced prohibitability of tattooing on the basis of the following Hadiths:

1. The previous Hadith narrated by Ibn Omar that the Messenger of Allah, may the blessings and peace of Allah be upon him, said

"Allah has cursed such a woman as lengthens (her or someone else's) hair artificially or gets it lengthened and also a woman who tattoos (herself or someone else) or gets herself tattooed."

The Muslim's version is:

"that the Messenger of Allah has cursed the woman who adds false hair and the one who asks that false hair be added to her, the woman who tattooes and the one who asks to be tattooed" (7).

2. The Hadith narrated by Abu Huraira,

"Allah has cursed such a woman who lengthens (her or someone else's) hair artificially or gets it lengthened artifi-

cially and also a woman who tattoos (herself or someone else) or gets herself tattooed."

And in another version by Al-Bukhari, Abu Huraira also narrated:

"A woman who used to practice tattooing was brought to Omar, Omar got up and said I beseech you by Allah, which of you heard the Prophet, may the blessings and peace of Allah be upon him, saying something about tattooing?» I got up and said: «I heard something. 'He said what did you hear?' I said' I heard the prophet, may the blessings and peace of Allah be upon him, (addressing the ladies) saying», Do not practice tattooing and do not get yourselves tattooed" (8).

3. The previous Hadith narrated by Ibn Abbas,

"Cursed is the woman who lengthens (her or someone else's) hair artificially or gets it lengthened artificially and the woman who plucks hair from her (or someone else's) face and the one who gets hair plucked from her face and the woman who tattoos (herself or someone else) or gets herself tattooed, without (having) a disease."

Abu Da'wud, after relating the above Hadith, commented «The woman who tattoos is the one who makes moles (or patches) on her face with kohl or ink, and the woman who gets herself tattooed is she who asks to be tattooed» (9).

4. The previous Hadith reported by Ibn Mas'oud:

"Allah has cursed those women who tattoo and those who ask to be tattooed, those who pluck hair from their faces and those who get hair plucked from their faces and those who get spaces made between their teeth for beautification changing what Allah has created."

In Al Bukhari's version:

"Those women who tattoo and those who get tattooed" (10).

The above Hadiths differentiate between the woman who tattoos and the one who asks to be tattooed.

The basis for deduction (that tattooing is prohibited) is that

«curse» is invoked only for prohibited things. Therefore the Hadiths indicate that tattooing is impermissible and that it is one ofhe great sins (11).

5. They based deduction, also, on rationality, i.e. on the fact that such practice causes pain to a living body without there being justifiable need or necessity.

Ibn Al-Jauzy said «It is impermissible since it causes harm that is unjustifiable» (12).

Reason for Prohibition of Tattooing:

Muslim scholars' opinion differs as to the reason for prohibition of tattooing:

Al Qurtubi reported that some Ulama maintained that it (i.e. the reason) is fraudulence (13), on the basis of the previous Hadith narrated by Ibn Mas'oud

> *"Allah has cursed those women who tattoo and who have themselves tattooed,... and those who make spaces between their teeth for beautification..."*

The majority of jurists were of the opinion that the reason for prohibition of tattooing is that it constitutes change of what Allah, glorified be He, has created by adding permanent marks and colours by means of pricking with pins and hurting the human body unnecessarily (14).

They based deduction on the following:

1. Allah, glorified be He, says:

> *«AND SURELY I (Iblis) WILL LEAD THEM ASTRAY, AND I WILL FILL THEM WITH VAIN DESIRES, AND I WILL COMMAND THEM SO THAT THEY WILL SLIT THE EARS OF THE CATTLE, AND I WILL COMMAND THEM SO THAT THEY WILL ALTER THE CREATION OF ALLAH. AND WHOSOEVER TAKETH SATAN AS A PATRON, INSTEAD OF ALLAH, SHALL SURELY SUFFER A MAINFEST LOSS (15).*
>
> *What is meant by*
>
> *SO THAT THEY WILL ALTER THE CREATION OF ALLAH*

is tattooing as Ibn Mas'oud and Al-Hassan Al-Bassri argued. So the rationale behind prohibition of tattooing is alteration of the creation of Allah (16).

2. The previous Hadith reported by Ibn Mas'oud:

> *"Allah has cursed those women who tattoo and who have themselves tattooed, and those who make spaces between their teeth for beautification changing what allah has created."*

In Imam Ahmad's account, the Hadith of Ibn Mas'oud reads

> *"I heard the Messenger of Allah, may the blessings and peace of Allah be upon him, cursing the women who have hair plucked from their faces, those who have spaces made between their teeth and the ones who ask for tattoos changing what Allah has created" (17).*

The Hadith indicated the cause for forbidding such things. Therefore the acceptable reason for prohibitability of tattooing is that maintained by the majority of jurists.

And since the cause for which tattooing is prohibited is change of the creation of Allah, permanently, it is, therefore, not included in forbidding tattoo to change creation in a mannar that is not lasting as such is the case with treatment of the eyes with kohl, dying hands and feet with henna and katm, rouging cheeks, paring and trimming fingernails and drawing patterns and designs with dyes. Al-Shukany said: «what is forbidden is change that is permanent; changes that do not perpetuate such as kohl and similar dyes have been deemed allowable by Malik and other Muslim scholars» (18).

Second: Removal of Tattoos

The Shafi'ites said: The tattooed part is impure due to congestion of blood.

Therefore it is necessary to remove tattoo, for prayers of one who carries something impure are not valid. The tattooed person is obliged to remove tattoo if he does it willingly: i.e. after he has attained legal age, even if he had been an infidel then became a Muslim. But if he is, unwillingly tattooed as it is the case with one who is forced to do that, or with a minor it is, then, not necessary to be removed, and accordingly the validity of such a person's prayers is not adversely affected.

They stated the manner in which it is removed and the consequences of that. They said «If it is possible to remove it by treatment,

removal is, then, necessary. As for removal by means of surgery, it is not necessary if it is feared that an organ is going to be damaged or it will be to the detriment of another organ or flagrant disfigurement in a visible part will ensue. Repentance in this case, will be enough. If such consequences are not feared, removal is then, necessary and whoever delays it is sinful.

All this applies to both men and women (19).

Some jurists, however, were not of the opinion that the tattooed part is impure. Al-Haythami has made a chapter for the question of the purity of tattoo and contended that it is not necessary to remove it basing deduction on what was related on the authority of Qais Ibn Abi Hazim who said:

> *"We visited Abu Bakr, may Allah be pleased with him, when he was sick. I saw a white woman (at his bed) with her hand tattooed, fanning off (flies). She was Asma Bint Umais" (20).*

Third: Branding (or Cauterization) of Face

Linguistically speaking, the «brand» is the «mark» made as by «cauterizing». To «brand» is to mark by or as if by burning, and a «brand» is, then, a «special mark». In Arabic the same entry can be used in other syntactic structures to denote derived figurative meanings, c.f. the Arabic entry «wasama» (21). Technically: the same linguistic meaning holds true, that is «cauterizing» usually to show ownership. Owners of cattle may have their own «brand» on them, so that they may not get mixed up with other cattle. Even in tribal tradition each tribe would have a special «brand» on the face to «mark» their members.

Islam made permissible branding of animals on all parts of the body except on the face. Jabir reported that

> *"Allah's Messenger, may the blessings and peace of Allah be upon him, forbade (the animals) to be beaten on the face or cauterized on the face" (22)*
>
> *(Related by Imam Muslim)*

As for branding a human being jurists agree upon its impermissibility since man is honoured and, moreover, it is unnecessary and man should not be tormented unjustifiably and without a warrant (23).

Cauterization for the purpose of cure is not forbidden. It is allowable in the opinion of the majority of jurists, for it is included in the types of treatment and cure that are permitted (24) on the basis of the Hadith:

> *"If there is any healing in your medicine, then it is cupping, a gulp of honey or cauterization that suits ailment, but I don't like to be cauterized" (25).*

As for the Hadiths that forbid cauterization, such as that related by Umran Ibn Hussain who said:

> *"The Messenger of Allah, may the blessings and peace of Allah be upon him, forbade cauterization, and we have been cauterizing and so we have not been granted success" (26).*

can have more than a level of meaning:

First Level:

It is, possibly, because undue significance was commonly attached to cauterization as being the last resort for cure and deemed as a decisive means for healing diseases, and that whoever ignored it would ruin himself and bring about his destruction. So the prophet forbade cauterization for them if it was done according to this belief, but made it permissible for them on the basis of relying (for cure) on Allah, highly exalted be He, and asking and expecting cure in the power that can be granted to cauterisation only by Allah. And thus cauterization is only a means and not a cause for cure.

People have many such wrong beliefs and superstitions. You would often hear them saying! «Had so-and-so remained at home, he wouldn't have died, and had he took the medicine, he wouldn't have got sick», and the like, which attribute happenings only to cause-and-effect, ignoring the inexorable effects of destiny. Causes are only indicators to such happenings and not decisive elements.

Second Level:

Cauterization might have been forbidden for a sound person when it is done as a means for protection against disease before it takes place, and this is disliked treatment and curing (through cauterization) is made permissible only when necessary.

Third Level:

The Hadith might have forbidden cauterization for a certain disease, for the Prophet knew that it was not curable through cauterization. This is why Umran Ibn Hussain said «We have not been granted success: for he had used cauterization for treatment of fistula whereas it is not a cure of it besides it is not a suitable part (of the body) for applying cauterization. If it is used as a treatment that may be fruitful or useless, it is, then, disliked» (27).

In short burning in order ot brand man's body is not permissible, but it is allowable if used for treatment that should lead to healing. It is not allowable to be used, in this way, experimentally.

Fourth: Abrasion of Face

«Abrasion», linguistically speaking, is loss of surface by rubbing, an «abrasive» is a substance used for «abrading» a surface (28).

Technically: abrasion of face means: treatment by application of a kind of powder to a woman's face (29) so that the outer skin wears away and complexion becomes clear (30).

Abu Ubaida said: «I think it is this kind of powder by which women treat their faces till the outer skin wears away and the next layer below epidermis appears. This practice is similar to what was mentioned about *«namisa»* (i.e. the woman who plucks hair from the face) (31)».

The Ulama deemed abrasion of the face impermissible, for it constitutes change of the creation of Allah, glorified be He, and on account of adverse consequences that will, later, affect the skin (32). They based deduction on the following:

1. The Hadith related by Imam Ahmad that Aisha said:

"The Messenger of Allah, may the blessings and peace of Allah be upon him used to curse the woman who abraded the face and the one who had her face abraded, the woman who tattooed (herself or someone else) and the one who asked for tattoo, the woman who added false hair to (her or someone else's) head and the one who had false hair added to her head" (33).

2. Imam Ahmad also reported on the authority of Karima Bint Humam who said:

> *"I heard Aisha, may Allah be pleased with her, saying: «O women! be careful not to abrade the face.» I asked her about dying. She said: There is no objection to dying, but I hate it because my Beloved (Prophet), may the blessings and peace of Allah be upon him, hated its smell" (34).*

So the reason for forbidding abrasion is that it constitutes change of creation, torture and affliction through abrading the face. Substances and ointments used by the woman to remove freckles and improve complexion are not included (35).

Second Question

New Surgical Operations For Changing Colour of the Skin

Islam prohibited tattooing, cauterization (and branding) and abrasion for they represent permanent change of original creation and affliction of the human being unnecessarily, but permitted use of dyes that are not permanent such as Kohl, henna, katm, rouge and the like. It has also permitted treatment with ointments and cauterization provided that greater harm does not ensue. Consequently dermabrasion performed for the purpose of improvement and beautification, is not allowable. It is permitted to medically treat things that unnaturally befall the body, such as tattoos, varicose veins of the legs, skin veins visibly clear on the face and deformities that result from burns, accidents or other causes unless treatment of such things should result in greater harm. All this is included in the kinds of treatment that are permitted.

Abrasion of the Face:

Several kinds of surgical operation are used for removal of freckles and blotches on the face, such as dermabrasion: here the skin is dried by means of abrasion then covered by penicillin gauze after anaesthetizing the part that is to be treated, then it is left for a week until the face develops a new epidermis (36).

And also among these of operations is the covering of the face with sulphur iodine solution, four times a day, for five days until the outer skin falls out and the face has a new complexion (37).

These operations do not extirpate freckles for they appear again after a while as Dr. Sabri Al-Qabbani says «Despite the fact that there are many definitely effective methods for removal of freckles, yet it is confirmed that they cannot extirpate them as long as you have a sensitive skin and mixtures that run in your blood and stimulate the pigment generating cells whenever exposed to sun rays (38)».

Since this method is proved to be ineffective in rooting up freckles and blotches, and may even be detrimental to the skin, it is, then, not allowable as I have explained earlier when abrasion of face skin was discussed.

Annotations

1. Ibn Manzour "Lissan Al-Arab" 3/933, Al-Zamakhshari: "Assass Al-Balagha" 677.
2. Al-Ayni: "Omdat Al-Qari" 19/225, Al-Iraqi: "Tarh Al-Tathreeb" 8/204, Al-Nawawi: Sharh Sahih Muslim 14/106, Al-Ramli: "Nihayat Al-Muhtaj" 2/22, Al-Qurtubi: "Al-Jami li Ahkam Al-Qur'an" 5/392, Al-Bahouti "Kashshaf Al-Qina'" 1/81.
3. Surgical Operations¨ Plastic Surgery, by a group of doctors p. 170.
4. Hashiyat Ibn Abdeen 6/373, Al-Ayni: (Omdat Al-Qari) 22/63, Ibn Juzey: "Qwaneen Al-Ahkam" p. 482, Al-Baji "Al-Muntaqa" 7/267, Ibn Al-Arabi: "Sharh Al-Termidhi" 7/262, Al-Nawawi: Sharh Sahih Muslim 14/106, "Al-Majmou'" 3/135, "Rawdat Al-Talibeen" 1/276, Al-Ramli: "Nihayat Al-Muhtaj)) 2/22, Al-Shafi'i: "Al-Um" 1/54, Al-Shirbini: "Mughni Al-Muhtaj" 1/191, Hashiyat Al-Jamal «1/417, Ibn Qudama» "Al-Mughni" 1/94, Al-Bahouti: "Kashshaf Al- Qina" 1/81, Al-Mirdawi: "Al-Insaf" 1/125, Ibn Al-Jusey: "Ahkam Al-Nisa'" p. 76, Al-Shukani: "Nail Al-Awtar" 6/215, Al-San'ani: "Subul Al-Salam" 3/144, Muhammad Seddeeq Khan: "Husn Al-Iswa" p. 269, Ibn Hazm: "Al-Muhalla" 11/298.
5. Sunnan Abu Da'wud 4/78. Ibn Hajar Said in «Fath Al-Bari» (10/376): Its ascription is «sound».
6. Ibn Hajar: "Fath Al-Bari" 10/376.
7. Sahih Al-Bukhari 7/63, 64, Salih Muslim 3/1677, Sunan Al-Termidhi 5/236.
8. Sahih Al-Bukhari 7/62, 64.
9. Sunan Abu Da'wud 4/78.
10. Sahih Al-Bukhari 6/58, 7/62-63, «Sahih Muslim» 3/1678.
11. Al-Shukani: "Nail Al-Awtar" 6/216, Al-San'ani "Subul Al-Salam" 3/144.
12. Ibn Al-Jauzi: "Ahkam Al-Nisa'" p. 10.
13. Al-Qurtubi: "Al-Jami Li Ahkam Al-Qur'an" 5/393.
14. Ibid, Ibn Juzey: "Qwaneen Al-Ahkam" 482, Ibn Hajar: "Fqth Ql-Bqri"10/373, Al-San'ani "Subul Al-Salam" 3/144.

15. Verse 119: Surat Al-Nisa'.

16. Ibn Jarir Al-Tabari "Jami Al-Bayan" 5/181, Al-Ma'wardi "Al-Nukkat Wa Al-U'youn" 1/4254, Ibn Katheer: "Tafseer Al-Qur'an Al-Azeem" 1/556, Ibid.

17. Musnad Al-Imam Ahmad 1/217.

18. Al-Shukani: "Nail Al-Awtar" 6/217, also see, Al-San'ani (Subul Al-Salam) 3/144, Al-Baji: "Al-Muntaga" 7/267, Al-Qurtubi: "Aj-Jamili Ahkam Al-Qur'an" 5/393.

19. Al-Nawawi: "Sharh Sahih Muslim" 14/106, Al- Ramli: "Nihayat Al-Muhtaj" 2/22, «Hashiyat Al-Qalyouby» 1/183, Hashiyat Al-Jamal» 1/481, Al-Shirbini: "Mughni Al-Muhtaj)) 1/191, Al-Iraqi: "Tarh Al-Tathreeb" 8/204, Al-Ayni: "Omdat Al-Qari" 19/225, Al-Shukani "Nail Al-Awtar" 6/216.

20. Al-Haythami: "Majma' Al-Zawadi" 5/170, He said: Related By Al-Tabarani And all transmitters are among those «Sahih» writers.

21. Al-Nawawi: "Tahadheeb Al-Asma Wa Al-Lughat" 4/191.

22. Sahih Muslim ma'Sharh Al-Nawawi 14/96.

23. Al-Ayni: "Omdat Al-Qari" 21/243, Al-Qurtubi "Al-Jami Li Ahkam Al-Qur'an" 5/392, Al-Nawawi Sharh Sahih Muslim 14/97, Al-Shukani "Nail Al-Awtar" 8/98, Al-Manawi: "Faid Al-Qadir" 5/275.

24. "Al-Fatawa Al-Hindiya" 5/356, Ibn Al-Arabi: Sharh Al-Termidhi 8/207, Hashiyat Umeira 3/204, Al-Shirbini: "Mughni Al-Muhtaj" 4/201, Ibn Al-Qayyim:"Al-Tib Al-Nabawi" p. 49, Ibn Abd Al-Hadi: "Mughni Dhawi Al-Afham" p. 29.

25. Sahih Al-Bukhari with "Omdat Al-Qari" 21/233.

26. Related by Al-Termidhi (4/398). He said: Approved and sound Hadith.

27. See Ibn Al-Qayyim: "Al-Tib Al-Nabawi" p. 50, Al-Khattabi: "Ma'alim Al-Sunan", Al-Ayni: "Omdat Al-Qari" 21/233.

28. Ibn Manzour "Lissan Al-Arab" 3/91-92.

29. Al-Ghamrah "Bi-Al-Dhama".

30. Al-Manawi: "Faid Al-Qadeer" 5/207.

31. Al-Majd Ibn Taimiya «Munttaqa Al-Akhbar ma Nail Al-Awtar)) 6/215.

32. Ibn Al-Jawzy: "Ahkam Al-Nisa'" p. 85 Al-Manawi: "Faid Al-Qadeer" 5/270.

33. Musnad Al-Imam Ahmad 6/250. Al-Haythami wrote in "Majmma Al-Zawa'id" (5/169): Related by Ahmed, and among transmitters are women who I do not know.

    Al-Saati stated in "Al-Fath Al-Rabbani bi Tarteeb Musnad Al-Imam Ahmad" (17/298): She is Um Nahhar for I have not found a biography of her, and as to Amna Bint Abdullah, «Ta'jeel Al-Manfaa» stated: Amna Al-Qayssiya from Aisha, may Allah be pleased with her. Jaafar Ibn Keisan reported on her authority, not known.

34. Musnad Al-Imam Ahmad 6/210.

35. Ibn Al-Jauzy: ((Ahkam Al-Nisa)) p. 86.

36. «Surgical Operations¨ Plastic Surgery» p. 147.

37. Dr. Sabri Al-Qabbani: Your Beauty, My Lady, p. 121.

38. Dr. Sabri Al-Qabbani: Ibid p. 123.

THIRD CHAPTER

Plastic Surgery

Allah in His Divine Wisdom, ordained that man's life, in this world of nature, be in stages: starting with formulation in the womb and ending with death. These are natural stages that every person should experience. Every stage has its own marks and characteristics. The foetus separates from mother after completion of growth and, thus, goes into the stage of infancy. At this stage man is characterized by being feeble, then organs grow up gradually gaining strength and firmness. Teeth appear and have spaces at this stage. At the stage of puberty signs of vigor and youth appear; rough hair grows on the male's chin, and the voice breaks. At the stage of old age the body becomes feeble, the face wrinkles and the back bends. Therefore the original shapes of organs are indicators of the stage at which man is. I am going to discuss, in this issue, provisions, whether already specified or yet to be given, for alteration of the shapes of organs.

First Question

Figh Provisions For Change of Organ Structure

There are some figh provisions, concerning change of organ structure, that govern the following matters:

1. Beautification of teeth by means of *tafleej* (i.e. making of spaces between teeth).

2. Beautification of organs by change of their shapes.

3. Beautification of severed organs by means of prosthesis and transplantation.

4. Beautification of enlarged organs by excising the excess.

5. Beautification of the ear by piercing and wearing earings.

First: Beautification of Organs By Means of Tafleej.

Tafleej, linguistically speaking, is derived from the Arabic root *«fallaja»* which means «to make teeth apart». The noun *«falj» is the*

«space» naturally found between the front teeth and the incisors. «*Tafleej*» is the act or practice of making such «spaces» artificially (1).

Technically: «*tafleej*» is filing of teeth, with a file or with any similar instrument, to make them delineated for the purpose of beautification (2). This practice is also called «*washr*» in Arabic; it means filing of the front teeth and incisors for creating a space between them so that the woman, whose teeth are without natural space between them, gets this space made artificially (3).

This teeth spacing is practiced by old women and by those who are approaching old age, in order to look younger and to show up pretty teeth. This nice space between teeth is found in young girls, and when a woman gets old her teeth grow larger and spaces between them disappear, she, therefore, files them so that they are nice, and thus she gives a false idea of being young.

The Hanafite, Malikite, Shafi'ite, Hanbalite and Zahirite Jurists-concur on impermissibility of teeth spacing for the purpose of beautification and (false) demonstration of young age, but not for the purpose of treatment and cure (4). They based deduction on the following:

1. The previous Hadith narrated by Ibn Mas'oud:

   "Allah has cursed those women who tattoo and who ask to be tattooed, those who pluck hair from women's faces and those who get hair plucked from their faces, and those who make spaces between their teeth for beautification changing what Allah has created" (5).

2. Imam Ahmad reported on the authority of Ibn Mas'oud too:

   "I heard the Messenger of Allah, may the blessings and peace of Allah be upon him, forbidding that a woman pluck hair from the face, file the teeth front and incisors to create spaces, add false hair to the head or tattoo without having a disease" (6).

Reason For Forbidding Teeth-Spacing:

The Prophet indicated it when he said:

"and the women who make spaces between their teeth for beautification changing what Allah has created".

Therefore, the reason is fraudulence and demonstration of (false) young age by means of altering the original creation excessively (7).

Second: Beautification of Organs by Change of Shape.

The fundamental rule is that change of the shape of organ, by reduction or enlargment, increase or decrease, is not allowable as far as the organ is in normal shape, on the basis of the Hadith that cursed the one who changes what Allah has created:

"Allah has cursed the women who tattoo... and the women who make spaces between their teeth changing what Allah has created."

Al-Tabari said:

"It is not permissible for a woman to change the form, in which Allah has created her, by increase or decrease for beautification, neither for husband nor for anyone else" (8).

Ibn Al-Arabi said «Allah, Highly glorified be he, created shapes in the best way by arranging the original forms, then He made them vary in respect of beauty by ranking them. So whoever wants to change the manner in which Allah has created him and, thus, acts contrarily to what He, in His Wisdom, has seen fit to be, is cursed, for he will have perpetrated something forbidden» (9)

Third: Beautification of Excised Organs By Bracing, Prothesis and Transplantation.

Jurists agree upon permissibility of fixture of metallic organs in the place of excised ones on the basis of the tradition related on the authority of Abdulrahman Ibn Tarafa that:

"the nose of his grandfather Arfaja Ibn Saad was cut off in the battle of Al-Killab so he fixed a nose made of silver. It made the cut putrefy, so the Prophet ordered him and he fixed a nose of gold" (10).

In another account the Hadith runs as:

"So, the Prophet ordered him to make it of gold."

The Prophet, may the blessings and peace of Allah be upon him, had made use of gold permissible when that was necessary, but in case of availability of another substance, such as plastic, that can be used instead of gold, use of gold is, then not permissible.

As for loose teeth, jurist's opinions concur on permissibility of bracing them with silver. They disagree whether it is permissible to brace them with gold; The majority of Malikite, Shafi'ite and Hanbalite jurists as well as Muhammad Ibn Al-Hassan Al-Sheibani and, Abu Youssef, according to an account, maintained that bracing of loose teeth with gold is permissible if it is feared that they will fall out on the basis of the previous Hadith about Arfaja (11). Abu Hanifa as well as Abu Youssef, according to another account, were of the opinion of impermissibility of bracing loose teeth with gold for (use of) gold is prohibited and is not permitted except when necessary, besides silver is viable for this purpose and so there is no need for gold (12).

The more acceptable opinion is that held by the majority of jurists, i.e. permissibility of bracing loose teeth with gold in case other metals, which can be used instead, are not available.

The majority of jurists deem permissible joining one's bones with a bone of an animal that is pure according to Sharia and, also, suturing a wound with sinews of such an animal.

Al-Nawawi wrote: «when one's bone is broken one should set it with a pure bone (i.e. taken from an animal that is pure). Fellow jurists said: it is not permissible for him to set it with an impure bone if a pure one, that can be used instead, is available (13).

Abu Hanifa said, talking of one whose tooth falls: «He is to take a tooth of a slaughtered ewe in the place of lost tooth (14)» Muhammad Ibn Al-Hassan said: there is no objection to using a bone if it is of a ewe, cow, camel, horse or of any other animal, except pigs and human beings for their bone should not be used (for cure), whether it is pure (i.e. slaughtered), dead (i.e. a carcass), damp or dry (15)».

These texts indicate permissibility of joining organs with parts of a pure animal. It is not permissible to join with parts of an impure animal except when necessary.

Fourth: Beautification of Organs By Means of Excising the Excess.

Organs in excess are either congenital or aquired.

1. Congenital Organomegaly or Supernumerary Organs:

If Allah creates an extra finger or an extra tooth in a person, is it permissible to excise it?

Jurists' opinions have differed on this. The controversy is attributable to whether these excess organs are part of the original creation, which should not be changed, or blemishes and defects of normal shape.

Imam Ahmad stated that excision of these excess organs is not permissible (16). Al-Tabari contended that it was not permissible for a woman to alter anything of the form in which Allah has created her for the sake of beautification, by increase or decrease, neither for husband nor for anyone else; as when she had an extra tooth and she pulls it out, or one that was too long and she cuts it short. «all this is forbidden for it constitutes change of what Allah, glorified be He, has created» he argued.

Al-Tabari, however, excluded from this; things resulting in harm, «such as when she has an extra or a too-long tooth that hinders her when eating, or an extra finger that hurts her, it is then permissible for her (to cut off such excesses). The same rule holds true for man as it does for woman (17)» he maintained.

Many Hanafite, Malikite, Shafi'ite and Hanbalite Jurists are of the opinion that such excesses are defects and blemishes in the normal creation, and, therefore, excision of them removes such blemishes and disfigurements and enhances beauty.

Al-Jawhara Al-Naiyira states «In an extra finger (18) there is a fair discretionary indemnity in honour of man, for it is part of his hand but it is neither of a (practical) use nor an adornment, and so is the additional tooth (19)»

Sheikh Illeish said, commenting on Sheikh Khalil's statement «As for (pulling off) an extra tooth (of another person), it is dependent on individual judgement (20)»: «this is (a) debatable (statement), for discretionary indemnity for surgeries and independent reasoning are only conceivable in cases loss and excision of an excess may not entail it - i.e. may not entail the loss - or it may entail a gain, as when a slave is castrated, his value increases. This may be applicable to an extra finger and all teeth in the mouth (21)».

Ibn Qudama said: «for these excess organs have no beauty. Rather, an excess is a blemish in creation, a defect entailing rejection of purchase (of a slave) and decrease of value. Therefore how can analogy be made with something that enhances beauty (22)?

It is noticed, from the above texts, that to aggressively excise any organ that is in excess does not entail payment of «blood money» on the part of

the aggressor, owing to the fact that he does not cause loss of something usefull or beautiful. He is obliged only to pay surgery indemnity for cutting it off without permission of person. If he cuts it with one's permission or o a legal administrator, he is to pay nothing.

"Fatawa Qadikhan" states: «Abu Al-Nasr, may Allah have mercy upon him, says: as regards opinion concerning cutting off an extra finger o something else, «If whoever cuts such a thing faces high probability o causing death, he is not to do it, for a life is, thus, exposed to perdition. I survival is likely, he is then at liberty to do that. As for the opinion concerning a man or a woman who cuts off an extra finger of a son. Some (Jurists) said: «such a person is not to pay indemnity, for this is treatment and they (i.e. parents) enjoy legal administration of treating (their sons) and of this is done by someone other than the parents, then the son consequently dies, he is to pay indemnity for not enjoying legal administration». Some other (jurists) counterargued that parents are not entitled to cut, and if any of them does this, and causes a damage to the hand the doer is, then, to pay indemnity». The chosen opinion is the first one unless infection or damage to hand are likely (23).

The conclusion about this matter is that congenital exceses are defects and blemishes in the normal creation, and it is therefore, permissible to excise them on the following conditions:

A. That they are in excess of normal creation, such as when there is a sixth finger in the hand or foot.

B. That they cause physical or psychological harm to whoever has them.

C. That the person who has them or his legal administrator gives permission for the excision.

D. That a greater detriment, such as mutilation or debility of an organ, does not ensue.

2. Aquired Excesses:

Jurists have made permissible excision of goiters (24), warts and abscesses, for they are not inborn, but exist as a result of disease therefore excision of them is included in the permissible kinds of treatment, on condition that infection is not feared (25).

Fifth: Beautification of the Ear By Piercing and Hanging Earrings.

Jurists opinions do not concur on piercing of girls' ears to hang

earnings. Hanafites and Hanbalites maintained that it is permissible (26), basing deduction on the following (Hadiths):

1. Al-Bukhari related on the authority of Abdulrahman Ibn A'bis said:

"I heard Ibn Abbas answering a man who asked him: Did you attend the prayer of the Bairam with Allah's Prophet, may the blessings and peace of Allah be upon him, Ibn Abbas replied Yes, and had it not been for my close relationship with him, I could not have offered it (That was because of his young age). Ibn Abbas further said: The Prophet went out to the raised open space seen by the side of Kathir Ibn Al-Salt's house where he offered the prayer and then delivered the sermon". Ibn Abbas did not mention anything about the Adhan (the call for prayer) or the Iqama (the second call to rise and offer prayers). He added then (The Prophet) ordered charity be given, then I saw women pointing at their ears and necks (indicating earrings and necklaces). Then he ordered Bilal (to go and take them), and Bilal did then return to the Prophet, may the blessings and peace of Allah be upon him.(27)

In another version Al-Bukhari, also on the authority of Ibn Abbas, said:

"The Prophet, may the blessings and peace of Allah be upon him, ordered them to give charity and I saw them reaching out (their hands to) their ears and necks (to take off earrings and necklaces, etc)"(28).

In yet another version by Al-Bukhari, he said:

"And so women donated their earrings and necklaces"(29),(30).

The basis for deduction is:

That people used to practise (at the Prophet's time) piercing of the ear; therefore, if it had been something that should be forbidden, the Qur'an or the Prophet would have forbidden it. So, the fact that it was not forbidden indicates permissibility (31). This, obviously, is true for females, but not for males.

2. The Hadith related, by Al-Bukhari and Muslim concerning Um Zar' who said:

"My husband is Abu Zar', and what is Abu Zar (i.e. what should

I say about him)? He has given me many ornaments and my ears are heavily loaded with them and my arms have become fat (i.e. I have become fat). A'isha then said: The Messenger of Allah, may the blessings and peace of Allah be upon him, said to me I am to you as Abu Zar' was to his wife Um Zar' (32)

Her (i.e. Um Zar's) statement:

"My ears are heavily loaded with them i.e. with earrings that women are used to adorn themselves with."

The Prophet, may the blessings and peace of Allah be upon him, (tacitly) approved what Abu Zar' had done as well as the practice of adornment with earrings, and this does not happen except after piercing the ear.

3. Al-Tabarani reported, in «Al-Awsat», in the biography of Ahmad Ibn Al-Qasim, on the authority of Ata' from Ibn Abbas,

"there are seven things that are of the Sunna in respect of (what to do for) a newborn on the seventh day (of its birth): he should be named, circumcised, cleaned and his ears pierced (probably females only) a sacrifice is offered for him, his hair shaved and he is smeared with blood of the sacrifice and an amount of gold or silver that is equal to the weight of his hair is given in charity"(34).

This Hadith has stated that the practice of piercing the ear is of the Sunna.

4. Owing to the fact that the woman needs to have her ears pierced for beautification and adornment which are necessary and essential for her, so it is permissible for her to pierce her ears for adornment (35).

The Shafi'ites contended that piercing of the ear is not permissible. Al-Ghazaly said: «I do not deem that a girl's ears should be pierced for hanging gold earnings, for this is a painful injuring equal to similar acts entailing equity in punishment - Therefore, it is not allowable except for a necessary prupose such as venesection, cupping or circumcision, and adornment with earrings is not important and, moreover, hanging them in the ear is an excess.

Necklaces and bracelets are enough for this purpose. It is impermissible, prevention of it is necessary, hiring persons to do it is not rightful and money taken for doing it is illegitimate except if exceptional permission is

proved to have been given by authentic reporting, but, so far, nothing has reached me as to much an exceptional permission» (36).

Ibn Al-Jawzy Al-Hanbali fell in with this opinion. Analogizing it to tattooing, he said «Forbidding tattooing is an indicator to prohibition of piercing the ear. Many women deem this act permissible for girls arguing that it enhances their beauty. This argument is of no consequence, for this is an unwarranted inflicted harm. Whoever does this should know that he is sinful and is going to be punished for it (37)»

Ibn Aqil, the Hanbalite, wrote in «Al-Fosoul»: «This act is deemed transgression when done to males.

As for women, it is probably forbidden (38)». He based deduction on the Verse.

AND SURELY I (IBLIS) WILL LEAD THEM ASTRAY, AND I WILL FILL THEM WITH VAIN DESIRES, AND I WILL COMMAND THEM SO THAT THEY WILL SLIT EARS OF THE CATTLE, AND I WILL COMMAND THEM SO THAT THEY WILL ALTER THE CREATION OF ALLAH (39).

«The clause

SO THAT THEY WILL SLIT THE EARS OF THE CATTLE.

indicates that slitting of the ear by piercing it is a command of the Satan. For «slit» means «cutting», and «piercing» of the ear is an act of «cutting». So, this is counted in cutting the ears of the cattle (40).

Discussion and Choice

First: Discussions of Hanafites' and Hanbalites' Arguments

1. The Hadith reported by Ibn Abbas does not indicate permissibility of piercing a female's ear on the basis of two reasonings:

First:

Wearing of an earrings is not necessarily effected by hanging it from a hole in the ear, rather it may be done by hanging it from the head with thin chain so that it comes down adjacent to the ear.

Second:

Non-disapproval of piercing the ear on the part of the prophet, may the blessings and peace of Allah be upon him, does not indicate permissibility, for it is probable that those women had pierced their ears

before the Sharia, and consequently something that is permanent and is lasting forgivable whereas that which is yet to be done is not (41).

The first reasoning is counteracted by indicating the fact that a woman usually hangs earring from a hole made in the ear and not by fastening it to a chain.

The second one can be countered by saying that piercing of the ear is an entrenched practice among women, both in the past and in the present. So, if it was forbidden, the Prophet, may the blessings and peace of Allah be upon him, would have referred to that, or (verses of) the Qura'an would have been sent down for it.

2. The Hadith of Um Zar' was counterargued in the same manner as the above Hadith.

3. As for the Hadith reported by Ibn Abbas,

"there are seven things that are of the Sunna.."

It is a defective Hadith for there is, among the transmitters, Rawwad Ibn Al-Jarrah who is deemed unreliable (42).

4. As regards the argument that women need (to have their ears pierced) for adornment, which was counterargued painful injuring that is not permissible except for something important such as circumcision, is responded to by indicating that piercing of a young girl's ear causes only light pain which is permissible for the purpose of adornment.

Second: Discussion of Arguments of Shafi'ites and their Advocates.

1. Analogy to the practice of slitting the ears of the cattle is not valid, owing to the fact that what Satan commanded them to do is the practice (performed in pre Islamic times) of slitting the ear of the male camel, born after five successive female ones, prohibiting it to be mounted, used in anyway or denied access to any watering or grazing place. They called such a camel *«Bahira»*, and, thus, Satan had made a «law» for them by which they abided (43). This practice is different from piercing a female person's ear for the purpose of adornment.

2. Analogy to tattooing is, likewise, not sound, for tattooing is a permanent change of the creation of Allah, and, moreover, it is an unjustifiable physical affliction, whereas piercing of the ear constitutes no change of the creation of Allah, glorified be He, and it has been made permissible for the need of adornment.

This makes evident that the more acceptable opinion is the one held by Hanafites and Hanbalites, i.e. that piercing of a female's ear is permissible, due to soundness of their bases of deduction, and because it satisfies a natural need for women, i.e. adornment, and, lastly, because the pain caused by it is insignificant.

Second Question

New Osteoplastic Operations & Plastic Surgery

Plastic surgery operations performed nowadays are of two divisions: those ones which have been legally characterized by jurists, such as *tafleej* «making of spaces between teeth», construction of organs with metals, such as constructing a nose with gold or silver, removal of excess parts and deformities and piercing of the ear.

The second division of these operations is the new operations which have not been legally charaterized, by jurists. Legal consequences of the Sharia for such operations are needed. This can be done by deducing proofs and evidence and by applying general rules.

Among these operations are:

1. Change of organ structure by addition or reduction.
2. Construction of organs by grafting.
3. Face - lift
4. Surgical removal of accumulated fat.

First: Change of Organ Structure By Addition or Reduction.

Some women, particularly singers and actresses, resort to changing shapes of outer organs, such as the nose, ears, lips, chin, and breasts for the desire of shapeliness, beauty and in order to attract attention.

Paula Jandesco, an Italian actress, says, «I have had the plastic surgery operation on the nose as an actress and not as a woman. Two months have lapsed since I had it.. All people used to say that the only defect I had was that slight hump which was seen in my nose. No sooner had I the chance to have the operation performed than I accepted it unfearfully, especially that I was assured by the doctor that it posed no risks. Nevertheless, what I want to confide to other women is that if my profession was not acting I would not have the courage for this operation,

especially that it involves some troubles.. For instance, I spent two weeks breathing, day and night, with my mouth, and I was not able to turn (my head) over on the pillow, neither right nor left, at bedtime, or else the operation would be spoilt (44)».

Schebella Gable says, «I was in the beginning of my career in the cinema, around 1960. I heard the directors, who introduced me, say nothing but «you have no future in the cinema as long as you have this nose» Should I left my nose prevent me from success and appearance before the audiance? I thought the matter over for long, then decided to get rid of this nose and went to a prominent surgeon and had the operation (45)»

Referring to motives that make women seek intervention of modern science for changing the structure of outer organs, Prof. Jean Franco Coriga, a plastic surgery specialist, says: «they are, mainly, attributable to the desire of woman for satisfaction of a vain desire that possession of her, or to longing on her part for another period of young age ofter getting old (46)»

Before I explain the legal consequences in the Sharia for these operations I will refer to the story of the American girl, Cathy Luke which was published by «Al-Akhbar» Cairo newxpaper (47). This girl changed her face to a Japenese one so that she could marry a Japenese young man whom she lobed.. Cathy met this young man in Yokohama where she was with her father on a business trip. She adored him, but his family being conservative refused to let him marry a girl who was not Japanese. Therefore, she went to a plastic surgeon asking to have her features changed so that she could look like a Japanese girl, and thus marry her lover.

The doctor modified her nose and changed the shape of the eyebrows to make her eyes look small. However the lover's family still opposed the marriage.

As for the lover himself, he did not like her new face, and so he left her and married a Japanese girl. Cathy had, thus received a strong slap in her love. She resorted once again to plastic surgery to restore her American face.

Therefore, motives for surgical change of organ shape, as noticed from the above accounts, are:

1. Satisfaction of vain desire on the part of woman who longs for an excessive improvement by changing the creation of Allah, glorified be He.

2. Fraudulence which is constituted in the attempt of an old woman to go back to young age.

If these are the motives for such change, then it is not permissible to perform the operation, and the doctor who conducts it as the woman on whom it is performed are sinful because it represents change of what Allah, glorified be He, has created as well as fraudulence, as it is the case with the act of making spaces between teeth. And Allah knows best.

Second: Construction of Organs By Grafting.

If a part of the body is severed due to a car accident, is it permissible to repair it by grafting? An instance for this is the grafting of a (damaged) nose where slices of skin are taken from either the forehead or the abdomen wall to be grafted on the nose, then they are buttressed by a bone taken from the thorax or the pelvis.

Jurists did not discuss such operations. They referred only to legal consequence of repairing organs with metals such as gold and silver as well as cutting a piece of flesh from the thigh, for eating, by a person who is forced to do this. «If a person who is forced to cut a piece from his thigh, or any other part of his body to eat, if the fear of this act is exactly as, or more than, the fear of not eating, this act, then is impermissible, or else it is, more probably, permissible, provided that anything else (to eat) is definitely not available to him (48).

If food is available, it is categorically impermissible to eat his own flesh.

Therefore, since it is permissible to cut a part from the body, which damages it completely, for the purpose of eating, then it is permissible to take off part of the skin for transplantation in another part of the body in order to dispose of a flagrant disfigurement, in an outer organ is tantamount to fearing of prolongation of an illness as Al-Zarkashi said (49).

Permissibility of cutting off for transplantation in another part should be within the following limits:

1. Using such part is unavoidable, for anything else is not available to be used instead.

2. Detriment ensuing from failure to perform transplantation for the purpose of beautification, is greater than that resulting from non-observance of the prohibited.

3. Success of the surgical operation is highly probable.

4. Act of cutting off does not result in greater harm such as breaking or damaging of any organ.

Third: Face - lift

Wrinkles appear due to loss of resilience of the skin and inertness of some cells. Slight folds appear on the epidermis, then they multiply, and go deep into the skin and lines appear.

Appearance of lines is natural in old age when resilience of the skin slackens and some cells are no longer active. They appear in young people for unnatural causes such as excessive drinking of alcohol and stimulants, internal diseases that affect the digestive and urinary systems and their organs, nervous and psychological disorders such as depression, distress and fatigue, skin diseases such as acne, insomnia and failure to have adequate sleep and (use of) cosmetics made of chemical substances and other causes (50).

Face-lift is done within the hairy scalp and the back part of the ears. Performance of this operation takes about seven days during which the face remains is not lasting; the lines come back after five years (51).

Legal consequence for face-lift varies according to age of the woman for whom operation is made.

If she is old and lines appear as a result of old age, then it is not permissible for her to have such an operation for it constitutes fraudulence, demonstration of false young age and change of the creation of Allah.

But if she is young and lines happen as a result of disease, it is, then, permissible for her to have the disease and its consequences, such as lines, treated provided that this operation does not lead to a greater detriment.

Fourth: Suction of (Accumulated) Fat out of the Body.

A plastic surgery to treat obesity entails suction of accumulated fat in some areas of the body. A suction tube is introduced under the skin and large quantities of fat are sucked out. Jurists did not discuss such operations. They, however, explained legal consequences of eating and of treatment for the purpose of getting fat. Among these are the following:

«Fatawa Qadikhan» states, «As for a woman who eats» *«fateet»* (crumbled bread soaked in meat soup) and the like, Abu Mutti' Al-Balkhi said «There is no objection to it, unless she overeats (52).»

«Fatawa Qadikhan» also states «It is permissible to use injection for the woman as a means of treatment.»

Injection is also allowable to (treatment of) thinness, for if thinness is excessive, it leads to tuberculosis (53).

«Al-Fatawa Al-Hinddiya» states «Abu Mutti was asked about the woman who eats *«kabkaba»* (49) and the like in order to get fat. He answered: there is no objection, unless she overeats. If she does overeat, it is then not permissible (54).

«Al-Fatawa Al-Hindiya» further states: «there is no objection if a woman fattens herself for her husband's pleasure (55)».

The above jurists' statements indicate that change of body structure by eating food, abstaining from it, or by treatment, is permissible unless harm ensues.

Suction of fat for the purpose of losing weight and shaping body is permissible under two conditions:

1. That suction of fat is the only means available (for treatment of obesity).

2. That no greater harm ensues from it.

Annotations

1. Ibn Manzour: "Lissan Al Arab" 2/1124, Al-Faiyoumi: "Al-Musbah Al-Munir" 2/658.
2. Ibn Qudama: "Al-Mughni"
3. Al-Qurtubi: "Al-Jami Li Ahkam Al Qur'an".
4. See: "Hashiyat Ibn Abdeen" 6/373, Al-Ayny: "Omdat Al-Qari" 19/25, Ibn Juzey: "Qwaneen Al-Ahkam" p. 482, Al Bajy: "Al-Muntaqa" 7/267, Ibn Al-Arabi: "Sharh Al-Tomidhi" 7/263, Al-Nawawi: "Al Majmou" 3/135, "Sharh Sahih Muslim" 14/106, "Hashiyat Al-Qalyouby" 1/183 Al-Shirbini: "Mughni Al-Muhtaj" 1/191, Al-Ramli "Nihayat Al-Muhtaj" 2/25, Ibn Hajar: "Fath Al Bari" 10/372, Ibn Qudama: "Al-Mughni" 194. Al-Bahouti: "Kashshaf Al-Oina'" 1/81, Ibn Abdulhadi: "Muhgni Dhawi Al-Afham" p. 27, Al-Mirdawi: "Al-Insaf" 1/125, Ibn Hazm: "Al-Muhalla" 11/298, Al-Shukani: "Nail Al-Awtar" 6/217.
5. "Sahih Al-Bukhari" 6/58, 7/62, 63, "Sahih Muslim" 3/1678.
6. Musnad Ahmad 1/415.
7. Al-Ayny: "Omdat Al-Qari" 19/225, Ibn Juzey: "Al-Qawneen Al-Fighhiya" p. 482, Ibn Al-Arabi: Ahkam Al-Qur'an)) 1/501, Ibn Hajar: "Fath Al-Bari", 10/372, Ibn Al-Jawzy: "Ahkam Al-Nisa" p. 68.
8. Ibn Hajar: "Fath Al-Bari" 10/378.
9. Ibn Al-Arabi: "Sharh Sunnan Al-Termidhi" 7/263.
10. "Sunnan Abu-Dawud" 4/92, "Sunnan Al-Termidhi" 4/240, He said: It is an «approved - strange» Hadith. Alhakim termed it «sound» as (nasb Al-Raya) states.
11. Al-Baja: (Al-Muntaqa) 2/807, Al-Aaby: Jawhar Al-Iklil 1/127, Ibn Qudama: Al-Mughni 3/15, Al-Nawai: Rawdat Al-Talibeen 2/262, Muhammad Ibn Al-Hassan: Al-Hujja 1/456, "Al-Fatawa Al-Hindiya" 5/266, Al-Kassani: Al-Bada'i; 6/2980, Hashiyat Ibn Abdeen 5/362.
12. Al-Kassani: Ibid.
    Ibn Abdeen: Ibid.
13. Al-Nawawi: Al-Majmou 3/132, Rawdat Al-Talibeen 1/275.
14. Fatawa Qadikhan, 3/413.
15. Al-Fatawa Al-Hindiya 5/354, Ibn Najm: Al-Bahr Al-Ra'iq 8/223.

16. Al-Mirdawi: Al-Insaf 1/125, Al-Bahouti: Kashshaf Al-Qina' 1/81.

17. Al-Qurtubi: Al-Jami; Li Ahkam Al-Qur'an 5/393, Ibn Hajar: Fath Al-Bari 10/377, Al-Shukani Nail Al-Awtar 6/217.

18. Al-Hukumat:

19. Al-Hadadi: Al-Jawhara Al-Nayirah 2/171.

20. Al-Ersh:

21. Uleish: Minah Al-Jaleel 4/417.

22. Ibn Qudama: Al-Mughni 8/41.

23. Fatawa Qadikhan: 3/410, 411.

24. As-Sala': Abscess like gland, excised from body equal to the size of a nutmeg or bigger.

25. Fatawa Qadikhan: 3/410
Mughni Al-Muhtaj 4/200, Ibn Qudama: Al-Mughni 8/627, Ibn Abdulhadi: Mughni Dhawi Al-Afham p. 29.

26. Hashiyat Ibn Abdeen 6/420, Fatawa Qadikhan 3/410, Al-Fatawa Al-Bazzaziya 6/371, Al-Fatawa Al-Hindiya 5/357, Al-Bahouti: Kashshaf Al-Qina' 1/81, Al-Mirdawi: Al-Afham 1/125, Ibn Abdulhadi Mughni Dhawi Al-Afham p. 27, Ibn Al-Qayyim: Nafhat Al-Mawdoud p. 125.

27. Sahih Al-Bukhari 8/153.

28. Sahih Al-Bukhari 7/54.

29. Al-Sakhab: Necklace prepared from beads¨ thread.

30. Sahih Al-Bukhari 2/122.

31. Ibn Al-Qayyim: Nafhat Al-Mawdoud p. 125.

32. Sahih Al-Bukhari 6/146, Sahih Muslim 4/1899.

33. Ibn Al Qayyim: Nafhat Al-Mawdoud p. 125.

34. Mujama' Al-Zawaid 4/59.

35. Al-Bahouti: Kashshaf Al-Qina' 1/81, Ibn Al-Qayyim: Nafhat Al-Mawdoud p. 125.

36. Al-Ghazali: Ihya Ulum Al-Deen 2/341, Hashiyat Omeyra 4/211, Al-Shirbini Mughni Al-Muhtaj 1/374, 496, Ibn Hajar: Fath Al-Bary 10/331, Al-Shukani Nail Al-Awtar 5/155, Al-Sanaani: Subul Al Salam 4/99.

37. Ibn Al-Jawzy: Ahkam Al-Nisa' p. 10.

38. Ibn Al-Mirdawi: Al-Insaf 1/125.

39. Verse 119: Surat Al-Nisa'

40. Ibn Al-Qayyim: Tuhfat Al-Mawdoud p. 126.

41. Ibn Hajar: Fath Al-Bari 1/331.

42. Ibn Hajar: Talkhis Al-Khabeer 4/162, Al-Shukani: Nail Al-Awtar 5/155.

43. Ibn Al-Qayyim: Nafhat Al-Mawdoud p. 126.

44. Muhammad Abdulaziz Amr: Dress & Adornment in the Sharia pp. 455, 456.

45. Muhammad Amr: Dress & Adornment p. 456.

46. Ibid. p. 457.

47. Al-Akhbar newspaper of Cairo, issued 20/5/1977 as reported by «Dress & Adornment» 461.

48. Al-Nawawi: Rawdat Al-Talibeen 3/285.

49. Al-Shirbini: Mughni Al-Muhtaj 4/306. Also see: Muhmoud Al-Sartawi: Studies Journal - Third Issue, 1984, p. 155.

50. «Surgical Operations & Plastic Surgery» pp. 136, 137.

51. Ibid, p. 139.

52. Fatawa Qadikhan 3/403.

45. Muhammad Amr: Dress & Adornment p. 456.

46. Ibid. p. 457.

47. Al-Akhbar newspaper of Cairo, issued 20/5/1977 as reported by «Dress & Adornment» 461.

48. Al-Nawawi: Rawdat Al-Talibeen 3/285.

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50. «Surgical Operations & Plastic Surgery» pp. 136, 137.

51. Ibid, p. 139.

52. Fatawa Qadikhan 3/403.

53. Ibid.

54. Al-Fatawa Al-Hindiya 5/355-356.

55. Ibid.

Conclusions

These are the rulings concerning plastic surgery operations. I have tried every effort conceivable to state the issues, explain causes and conclude all-embracing rules controlling them. These rules are:

1. Surgery being torture and suffering for a living person, is not permissible except when need or necessity dictates.

2. No alternative to surgical operation is available for satisfying the need or necessity in question.

3. Success of operation is a high probability in the opinion of the doctor. He is not allowed to experiment on the human body.

4. Surgery should not be conducted in order to change natural body structure; it is not permissible to alter the shape of organs neither by reduction nor by enlargement.

5. Natural beauty of the original and known structure should not be disfigured or marred.

6. Surgery should not constitute fraudulence, cheating nor deception, it is not permissible for an aging woman to have a surgical operation for the purpose of demonstrating (false) young age.

7. No greater harm, such as damage of an organ, ensues from such operations.

8. Surgery should not be conducted for the purpose of imitation on the part of one sex (male or female) of the other; it is not allowable for men to imitate women by adorning themselves in the manner women do, and vice versa.

9. Purpose for having them should not be imitation of infidels; Muslims are not permitted ot imitate infidels in anything pertaining to their way of adornment.

10. Surgery should not be resorted to for the purpose of imitation of the evil and the immoral.

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MENSES, PUERPERIUM & PREGNANCY: MINIMUM & MAXIMUM PERIODS

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Significance of Research on This Subject.

Menses and puerperium are common and recurrent matters. It has been proved authentic in the Sunna Books that the Messenger, may the blessings and peach of Allah be upon him, came to Aisha, in the Farewell Pilgrimage, while she was weeping because she had got her menses and was afraid that would affect her performance of pilgrimage. Teaching and comforting her he said,:

> *"This is a thing which Allah has ordained for the daughters of Adam. So do what all the pilgrims do with the exception of the tawaf (circumambulation) round the Ka'ba" (1).*

For menses» and «puerperium» the law-maker made many important provisions.

The menstruant and the puerperant are forbidden to offer prayers, fast and circumambul the Ka'ba. They are also prohibited from staying inside a mosque and, as many Ulama maintain even from touching and reading the Qur'an. The Law-maker also made it impermissible for a husband to have coition with or even divorce a menstruant or puerperant wife. He also made menstruation a sign of puberty. *Idda* (i.e. the period of waiting prescribed by Sharia during which a woman may not remarry after being widowed or divorced) is three courses for a menstruant woman. Major ablution (*gusl*) is obligatory for both the menstruant and puerperant women when the bleeding stops.

And since the duration of menstruation and puerperium are not the same with all women, rather they vary considerably and, in addition, blood discharged by some women is sometimes not menstrual blood but due to a disease, many Ulama have been unable to know the true state of affairs concerning the duration of menses and puerperium. Their opinions have

been considerably at variance as regards this subject and in other questions pertaining to menses and puerperium. These conflicting opinions usually cause difficult problems for women. Some opinions given by some Ulama are not correct and are practically inconvenient for women, not to mention the fact that conflict of opinion makes women unable to decide.

The reader of this research will see that the true state of affairs for those matters is not decisively provided for in the Book or the Sunna. The law-maker has left it to be determined through studying women's habits in respect of menstruation, puerperium and pregnancy.

And since the matter is connected with determining the actual state of affairs, then I can safety say that we are more able, in the present age, to know the facts about women.

The jurist, in the past, referred to his wife, a female relative or news reaching him about women for basing his opinion. If other jurists consulted doctors, it is known that scientific research, in this connection, had not matured in those days.

We are nowadays more able to distinguish the truth in such issues, thanks to scientific progress that made possible the determination of the true nature in many cases, and because knowing women's affairs in the questions researched has become more accurate, for it can be undertaken by institutions which can control a large portion of women in different countries for accurate examinations.

I know that some jurists have been correct in what they concluded, the Pan-Nation being infallibly correct in an opinion consensusly held. Nevertheless, today we are able to pinpoint facts that should put an end to controversy.

Accordingly, jurists are looking forward to knowing the fruits of science and findings of research, reached at by doctors and researchers in this connection, particularly for the following four question:

1. Minimum and maximum periods of menses and puerperium.

2. The question of possible occurrence of menses during pregnancy.

3. Age at which it is possible for a woman to menstruate and age in which a woman's periods stop (menopause).

4. Minimum and maximum duration of pregnancy.

This research sheds light on jurists' opinions and individual judgements and the arguments they relied upon in these four questions, and Allah is He Who grants success to that which is correct.

Definition of Menses & Puerperium.

A woman «menstruates» when there is the natural periodic flow of blood from the womb. Al-Mubarrad said «menstruation is so called (in Arabic) since we say: the valley flows (literally menstruates) when the flow of water is plentiful, and the acacia pours forth (literally menstruates) when a blood-like mucilage flows from it, which is the red gum (2). Al-Azhari said: «And menses is blood discharged from a woman's womb at regular periods after attaining pubescence (3)».

«The etymology of the words.» Al-Qurtubi maintains, «has its roots in the semantic field of flowing and discharging; we say: the torrent flows (literally: menstruates) and pours, and the tree 'menstruates', that is its moisture or dampness is felt. There is a derivationally significant point in this word, as through certain linguistic mutation, the Arabic word corresponding to English «basin» is related by a common root. Ibn Arafa said: meanses and menstruation refer to the blood collected in that place, that is how a «basin» was so called as it is a place where water is held (4)».

The technical definition for the term «menstruation» is, in point of fact, not different from the linguistic one as both define something that is witnessed and known. It is defined by the author of (Nail Al-Maarib), a Hanbalite Jurist, as «blood that is naturally discharged at definite periods when the body is healthy and without; there being parturition) (5). Al-Kissani, the Hanafite jurist, defined it saying «the menstrual flow, as defined by the Sharia, is blood which flows out of the womb in a definite amount and definite time without being preceded by childbirth (6)».

It was defined by the author of «The Encyclopaedia (of fiqh), Ibrahim Al-Nakh'i, as the blood discharged by the womb of an adult woman who is not ill nor pregnant and has not attained menopause (7)».

Menstrual blood is distinguishable by its colour and smell. In the Hadith narrated by Abu Da'wud and Al-Nessai on the authority of Fatima Bint Abu Hubeish, the Messenger, may the blessings and peace of Allah be upon him, said:

> *"When there is menstural blood, it is black and (thus) it is known" (8).*

By «is known» he meant that women know it. In another version of the Hadith this word was used in active voice meaning «smells». i.e. it

"has a smell known"

to women.

Some jurists claimed that menstural blood is blood of «impurity», but this claim was argued against by verifier-jurists. Ibn Muflih, the Hanbalite jurist, says «It is not blood, of impurity, rather it is created by Allah for the divine wisdom of feeding and rearing the baby. When a woman gets pregnant, with the permission of Allah, it becomes food for the embryo, at time of delivery, it turns with the wisdom of Allah into milk for feeding the baby. Hence a nursing mother rarely menstruates (10)».

When blood is discharged from a woman due to an illness of bleeding it is not menstrual blood.

This kind of blood is classified by some Ulama into two divisions:

The First:

blood of «impurity» and

The Second:

inter-menstrual bleeding.

Imam Al-Shafi', is one of those Ulama: he deems the blood seen by a girl before, fully attaining nine years of age blood of impurity (waste blood), and should not be called inter-menstrual bleeding (11).

The majority of Ulama, however, maintain that any flow that is not menstrual or puerperal blood is intermenstrual blood (12). Al-Nawawi says in ((Al-Rawda): «Inter-menstrual bleeding is any flow (of blood) seen by a woman other than menstrual or puerperal blood, whether it is connected with excessive menstruation or not, such as that experienced by a seven-years old girl for instance. It may be used to term the flow that is connected with menstruation in particular, and it is called waste blood (13).

Bleeding that exceeds the maximum duration of menstruation and puerperium or that is less than the minimum period is deemed inter-menstrual bleeding in the opinion of many jurists who set a specific number of days for the minimum and maximum periods for menses and puerperium.

The Malikite jurist, Al-Qarafi, says. «Inter-menstrual blood is that which exceeds what is considered menstrual flow» (14).

Differentiating between menses and inter-menstrual bleeding Al-Azhari says: «Menstrual flow is blood which is discharged from the fundus uteri. It is black and hot as though it is burned. Inter-menstrual blood is that which flows from the «*aadhil*», i.e. the vein from which inter-menstrual bleeding occurs down the uterus not in the fundus uteri (15)».

Al-Harawi and other linguists said: «Menstrual flow is blood that is discharged at regular time after attainment of puberty, and inter-menstrual flow is blood discharged at irregular times (*istihadha*) (16)».

The prophet, said to a woman who had an inter-menstrual flow who sought his opinion,

"it is from a blood vessel and not the menses"

(Related by Al-Bukhari, Al-Nessai' and Abu Da'wud) (17).

One of the prescripts of the Sharia is that inter-menstrual flow does not prevent a woman from things which menstruation and puerperium do.

The puerperium is the period of confinement after childbirth. The Arabs used to describe as «Puerperant» the parturient, pregnant and menstruant woman (18).

Jurists defined puerperium as the same «Blood discharged by the womb for and after childbirth for a definite period of time. It is the remaining amount of blood that has been retained during and for the term of gestation.

Linguistically speaking the Arabic word has its semantic origin in «expelling out», that is something sent out from the inside. And in Arabic we also say: 'May Allah (literally: expel out) one's calamity', that is may Allah dispel and drive out one's gried (19).

Jurists do not stipulate that childbirth should take place after completion of pregnancy period so that there could be puerperium. Shafi'ite jurists stated that the consequence of puerperium is the same whether the baby is born at term or before, alive or dead, or formed or unformed, as it is the case when it is delivered in the form of a «*nutfa*» or a clot if midwives state that it is the beginning creation of a human being (20).

Hanbalite jurists maintain that the puerperium does not exist unless the woman sees blood after delivery of something identifiable as a human form. Therefore, if the thing delivered is just a mass or a clot, there is, then,

no puerperium. They have two viewpoints as to a «*nutfa*» delivered by the woman, in which no human form is recognizable (21).

Minimum and Maximum Period For Menses

A group of Ulama, among whom Imam Malilk, may said: There is no specific minimum period for menses. This opinion is also held by Malikite jurists and by Ibn Hazm, the Zahirite. It is reportedly maintained by Abu Youssef as well.

Imam Al-Shafi'i and Imam Ahmad, were of the opinion that the minimum period for menses is a day and a night. Ata' and Abu Thaur were also of this opinion. Al-Thawri, Abu Hanifa, Abu Youssef and Muhammad contended that it was three days.

Some Ulama maintained that there is no maximum period for menses. This opinion is ascribed to Malik. Two other opinions of his were, however, reported by Al-Mawardi: First: Fifteen days. This opinion is held by Imam Al-Shafi'i, and which is known to be maintained by his followers; it is also the opinion of Ata, Ahmad and Abu Thaur.

The other opinion of Malik is that it is seventeen days. This opinion was reportedly maintained by Imam Ahmad. It was also the opinion of Ibn Hazm.

Al-Qurtubi said: «The opinion held by Malik and his followers is that menstruation does not last more than fifteen days. Malik, However, was also reported to have said that there was neither minimum nor maximum period for menses but that experienced by a particular woman. It seems that he has abandoned his first opinion and went back to the standpoint that a woman's habit, in this conncetion, should be the determinant (22).

Minimum and Maximum Period for Puerperium

Ibn Rushd stated in ((Bedayat Al-Mujtahid)): «Their opinions have differed as to minimum and maximum duration of the puerperium; Malik maintained that there was no minimum period for it».

Al-Shafi'i was of the same opinion. Abu Hanifa contended that it was limited; he said: «It is twenty five days», wheras Abu Youssef, his follower said: «It is eleven days». Al-Hassan Al-Bassri said: twenty days.

As for the maximum period, Malik once said: «It is sixty days». Then later changed his mind and said: «Women are to be consulted about it». His followers, however, kept to the first opinion. The majority of learned

companions were of the opinion that the maximum period was forty days, Which was also Abu Hanifa's opinion».

Al-Nawawi said: the opinion that is widely acceptable in our school (Shafiite School) is that the maximum period for it is sixty days, and this is also the opinion held by Ata', Al-Shabi, Al-Anbari, Al-Hajjaj Ibn Arta', Malik, Abu Thaur and Da'wud. Ibn Al-Mundhir said: Ibn Al-Qasim claimed that Malik has changed his mind as to limiting it to sixty days and said: «Women are to be consulted about that».

The majority of Ulama of the Companions, the followers and those who came after them were of the opinion that the maximum period was forty days: this was reported by Al-Termidhi, Al-Khattabi and others. Al-Khattabi said: The majority of people have kept to this opinion: Ibn Al-Mundhir reported this had been maintained by Omar Ibn Al-Khattab. Othman Ibn Abi Al-Aas, A'idh Ibn Amr, Um Salama, Al-Thawari, Abu Hanifa and his followers, Ibn Al-Mubarak, Ahmad, Ishaq and Abu Ubeid, may Allah be pleased with them.

Al-Termidhi, Ibn Al-Mundhir, Ibn Jarir and others reported that Al-Hassan Al-Bassri maintained that it was fifty days. Al-Qadi Abu-Tayib said: «Al-Tahawi said: «Al-Leith reported that some people contended that it was seventy days».

Ibn Al-Mundhir said: Al-Awzai stated people of Damascus argued that puerperium resulting from giving birth to a boy lasts for thirty days, and to a girl forty days. He reported that Al-Dahhaq contended that the maximum period was fourteen days. Ibn Hazm said that it was seventeen.

The minimum period for puerperium in the opinion of Shafi'ites is an-all-at-once discharge. Al-Qadi Abu Al-Tayib said: This is maintainesd by the majority of Ulama, and it is the opinion of Malik, Al-Awzai, Ahmad and Ishaq.

As for the opinion of Abu Hanifa, different accounts were reported, the soundest of which is that it was an all-at-once- discharge, as Shafi'ites maintained, and the second was that it was eleven days, and the third said that it was twenty five days.

Al-Awzai related that al-Thauwri maintained that the minimum period for it was three days. Al-Muzni said: The minimum is four days (23).

Evidence

No Evidence of Limitation in the Book or the Sunna:

Some jurists adduced texts from the Sunna for defining minimum and maximum periods for menses. The texts they adduced are not valid for basing deduction because they are either sound but do not prove their opinion, or clearly indicative of the matter in question but are not sound.

Among the first category, on which Hanafites based deduction that the minimum period for menses was three days, is the Hadith related by Al-Bukhari that the Prophet said to Fatima Bint Abu Hubeish who had inter-menstrual bleeding:

> *"Give up the prayers only for the days on which you usually get the menses and then take a bath and offer you prayers" (24).*

The reason for which they adduced this Hadith as basis of deduction was that the word «days», in the statement:

> *"Give up the prayers only for the days..."*

was «plural», and the minimum plural (in Arabic) is three (25).

The reason for invalidity of basing deduction on the Hadith is that this woman, who was ordered by the Messenger, to follow instructions as stated in the Hadith, was accustomed to having inter-menstrual bleeding, so he instructed her to her usual menstruation days. This does not necessarily indicate that every menses do not last less than three days.

And among the second category: i.e. the texts that clearly indicate this matter but lack soundness, is the Hadith, adduced by the Hanafites as proof of minimum and maximum periods defined by them for menses, which was narrated by Abu Imam Al-Baheli, that the Prophet, said:

> *"The minimum period that menses take for both the married and virgin girl is three days, and the maximum period is ten days, anything exceeding this is inter-menstrual bleeding (istihadha) (26)."*

They also based their deduction on what a group of companions, may Allah be pleased with them, among whom were Ibn Mas'oud, Anas Ibn Malik and Umran Ibn Hussain were reported to have said:

> *"Menses last for three, four. five, six, seven, eight, nine, ten (days)" (27).*

These texts are not sound; they have been termed defective by Ulama of the Hadith. Ibn Qudama has shown the irreliability of relaters, and stated what Ulama of the Hadith said of them.

Indicating the Hadith narrated by Abu Umama, he wrote «It is a defective Hadith; related by Muhammad Ibn Ahmad Al-Shami, who is unreliable, from Hamad Ibn Al-Minhal, who is unknown. As for the Hadith narrated by Anas, it is related by Al-Jald Ibn Ayoub, who is unreliable, Ibn Uyayna described it as «innovated and groundless». Ahmad commented on the Hadith of Anas» it is nothing, it is from Al-Jald Ibn Ayoub. It is said «I do not think that he has heard it from anyone but al-Hassan Ibn Dinar who is extremely unreliable (28).

The Shafi'ites based their opinion that the maximum period for menses is fifteen days on the Hadith,

> *"Anyone of you (i.e. women) remains half of her life not offering prayers" (29).*

This is a defective Hadith. The hafiz (i.e. one who commits the whole of Qur'an and a large number of Hadiths to memory) Ibn Hajar said explaining the method in which this Hadith was transmitted: «The hafiz Abu Abdullah Ibn Mendah said, in what Ibn Daqiq Al-Il reported about him in ((Al-Imam)): «some of them mentioned this Hadith: its authenticity cannot be proved in any way». Al-Bayhaqi wrote in ((Al-Marifa)): «this is a Hadith that is cited by some of our jurists; I have looked for its sources many times and have found nothing about it in the Hadith books, neither have I found ascription for it..» See the rest of his comment in «Talkhis Al-Khabir (30)».

Al-Nawawi said about this Hadith «It is an invalid and obscure Hadith» (31).

Therefore, the Ulama who are well versed in the science of Hadith declared that «Nothing has been proved authentic as regards setting of minimum and maximum period for menses. All Hadiths related about that are either forged or utterly defective (32).

Sadeeq Hassan Khan wrote in ((Al-Rawda Al-Nadiyya)): «Nothing was proven authentic, in respect of the minimum and maximum period for it that can be adduced as proof. Any Hadith that is related concerning minimum and maximum periods for menses is either with interrupted chain of transmitters and consequently is not valid for basing deduction, or

traceable in ascending order to the Prophet, but not sound and accordingly unreliable and cannot be taken as reference (33)».

Sheikh Al-Islam Ibn Taimiya said: «The Prophet, may the blessings and peace of Allah be upon him, did not set a limit for the minimum period of menses as Hadith people consensusly agreed upon. There are three Hadiths that were related in this respect. The authorities in Hadith have agreed that they are forged Hadiths (34).

The question, which a number of Ulama deemed the Hadith concerning it authentic, is that of the maximum period for puerperium.

Abu Dawud and Al-Hakim related on the authority of Khater Ibn Ziyad who said: The Uzdia (womom)-i.e. *Massah-* said to me: «I performed pilgrimage then called in on Um Salama, I said: «O, Mother of the Faithful! Samra Ibn Jundub orders women to offer the prayers they missed during menstrual periods.» She said: «They are not to offer prayers they missed (during periods); anyone of the Prophet's women, may the blessings and peace of Allah be upon him, used to remain puerperant for forty days, and the Prophet, may the blessings and peace of Allah be upon him, would not order her to offer the prayers missed during puerperium» (35).

Al-Nawawi wrote in (Al-Majmou) «It is an approved Hadith, and was related by Abu Da'wud, Al-Termidhi and others. Al-Khattabi said: Al-Bukhari mentioned this Hadith favourable. Hadiths to the effect of this one narrated by Abu Al-Darda, Ana, Mu'ad, Othman Ibn Abi Al-Aas and Abu Huraira, may Allah be pleased with them, were adduced as a proof (that there was a maximum period for puerperium» (36).

He stated that some Ulama had termed this Hadith defective. Rejecting such an argument he further said: «This is not acceptable, on the contrary it is a «good» Hadith, as for the other Hadiths, they have been termed defective by the hafizes among whom was Al-Baihaqi who provided the grounds for their defectiveness (37)».

Al-Shawkani stated that Al-Hakim indicated that it was a sound Hadith (38). Al-Shawkani, may Allah have mercy upon him deems «Proofs, which indicate that the maximum period for puerperium is forty days, mutually consolidate each other to the extent that they are valid and worthy of consideration, and therefore they should be relied upon, and a puerperant should remain forty days (not offering prayers) unless she becomes pure (from it) before that as the previous Hadiths indicated. Al-Termidhi reported in his (Sunnan): «Companions of the Prophet, may the blessings and peace of Allah be upon him, and their followers and those who came

after them were consensusly of the opinion that a puerperant should give up prayers for forty days unless she was pure prior to that. If she is so she can have a bath then offer prayers. Unquoted (39)».

The Hafiz Ibn Hajar and Sheikh Naser Al-Deen Al-Albani termed its ascription as approved, and refuses the argument of those who deemed it defective (40).

It was deemed defective by Ibn Hibban, Al-Darqutni, Ibn Hazm in his (Al-Muhalla) and Sheikh Ahmad Shakir, for the narrator, Massah the Uzdia, was obscure. Ibn Habban deemed it defective on the account of Kathir Ibn Ziyad. Ibn Habban was not in the the right for terming it defective because of Kathir. Those Hadith authorities have stated proofs that make the Hadith acceptable for use in substantiating arguments (41).

The Proof is Detection And Deduction:

Since there is no sound proof that indicates setting of minimum and maximum periods for menses and puerperium, then the only way to know that, is detection and studying of a woman's habits in this connection.

It is, in fact, the only way to determining many questions related to menses and puerperium, such as menstruation of a pregnant woman during gestation and the maximum period for pregnancy.

In the context of determining minimum and maximum periods for menses Ibn Qudama says: «If menses is proved to have been stated in the Sharia as well as in the language without reference to its limits, then determination of such limits should be based on custom and habit as it the case with seperation, laying hands-on, placing under custody and other matters (42)».

The Hanbalite author of ((Al-Mubdi)) states: «There is no minimum (period) for puerperim, for nothing in the Sharia has indicated limitation of it. Therefore the reference for this matter should be the available facts (43)».

The Shafi'ite author of ((Kifayat Al-Akhyar)) wrote: «The minimum period for menses is a day and a night when checking, i.e. detection, is used» (44).

Our early Ulama studied the habits of women - wives, female relatives or those whom they learned about their habits in this connection, then each of them based opinion on information he had about this.

Counterarguing those who claimed that the minimum period for menses was three days and the maximum was ten, Imam Al-Shafi, said: «I have seen a woman whom it was proved to me that she used to menstruate only for one day and had never exceeded that. It was also proved to me that some women used to menstruate for thirteen days (45)».

Ata' said: «I have known a woman who menstruated for one day, and others for fifteen days».

Ahmad said: «Yahya Ibn Adam told me that he had heard Sharik saying: «There is a woman among us who loses menses regularly for fifteen days every month».

Ibn Al-Mundhir said: «Al-Awzai said: «We have a woman who loses menses in the morning and is pure in the evening, and such menstruation is deemed a sufficient cause for giving up offering of prayers».

Al-Shafi' said: «I have known a woman whom it was proved to me that she used to menstruate for only one day. It was also proved to me that some women used to menstruate for less than three days».

Ishaq Ibn Rahaweyh stated that Bakr Ibn Abdullah Al-Muzani said: «MY wife menstruates for two days».

Ishaq said: «A well known woman of my relatives said: «For twenty years I have never broken fast in the month of Ramadan except for two days, And what they (i.e. women) say must be heeded, is because Allah, glorified be He, says:

NOR IS IT ALLOWED UNTO THEM THAT THEY SHOULD HIDE WHICH ALLAH CREATED IN THEIR WOMBS

If what they state was not acceptable, the hiding would not be made impermissible for them. This is similar to the verse:

AND HIDE NOT TESTIMONY

No regular menses have lasted less than that in any age, or else it would not be menses in any way» (46).

Opinion of Sheikh Al-Islam In This Question:

Sheikh Al-Islam, Ibn Taimiya gained a victory for those who had maintained that there were no minimum period for menses. He based point on the general nature of texts. Sharia has set forth certain provisions for menses, meanwhile it has not set a specific period of time for which

menses last, hence generalizing texts should not be made restrictive. Commenting on this subject, he, says 'Allah has prescribed many provisions for menses in the Book and in the Sunna, but He has not set a minimum or maximum periods for them despite the fact that it is a matter of concern to the entire nation and there is need to know the relevant Sharia provision.

The language also does not differentiate between one extent and another.

Therefore, whoever sets a limit for that has acted contrarily to the Book and the Sunna. Some of the Ulama set minimum periods for them, then the limits they set are different, some others set the maximum period only. The third statement is the soundest, that is there is neither minimum or maximum period for them; rather any periodic flow of blood (discharged regularly form the womb) is menstrual flow, and if the maximum period it regularly takes is seventeen days, it is, then, menstrual flow. But if blood not menstrual blood for it is known from the Sharia and the Language that a woman is pure at times and is menstrual at other times.

There are provisions governing her purity period and other ones for her menstruation (47).

He views that puerperium, as it is the case with menses, has no minimum period, and that the Lawmaker does not set a maximum period for it. Referring to this, he, said: «Puerperium has no minimum not maximum period. If a woman discharges blood for more than forty, sixty or seventy days then it stops, it is puerperium; but if she kept on bleeding, it is then «waste» blood. the limit is then, forty days. It is most probably, the maximum period as traditions have stated (48).

He thinks that there is no specific age for menopause; a woman may despair of menstruation at the age of forty, and she may have menstrual periods until she is seventy. he says «There is no (maximum age at which a woman ceases to lose menses even if after attaining sixty or seventy, she saw the well-known blood discharged from the womb. It would be menstrual blood. Despair stated in the Verse:

> *AND AS TO SUCH OF YOUR WOMEN AS HAVE DESPAIRED OF MENSTRUATION*

is not meant to refer to attainment of an age; if this was what is meant, Allah and His Messenger would have explained it, but it refers to despairing, on the part of woman, of getting the menses; when menstrual blood stops and she despairs of having periods once again, then she is

deemed to «have despaired of menstruation» menstrual blood recurs, she is not be regarded as one who has «despaired of menstruation».

If she should experience it once again after the (prescribed) three months, her case, then, would not be different from that of other despairing and doubting women who would experience it under similar condition. Therefore, whoever does not deem this as what is meant by «despair», and, instead, maintained that what is meant by it is (attainment of) an age, his argument is, then not sound (49).

Sheikh Al-Islam rejects to rely on (what is deemed as) the factual findings about what women experience, in respect of menstruation. For basing argument, because these factual findings lack controls, and for the fact that whoever sets a certain limit bases argument only on what he knows but cannot refuse what he does not. His knowledge may be limited and thus, he may learn in fact less or more than the limit he has set.»

Indicating this, Sheikh Al-Islam, says «The one who does not adopt this, and, instead sets a day and a night or three days as minimum period for menses, he, then, will have nothing to rely upon for proving his point since what is reported as having been said by the Prophet is not valid in the opinion of Ulama of the Hadith. Besides the Factual findings do lack controls. If one person should learn only about menstruation that he learned about menstruation that had lasted for a day and a night, and whereas a person might know only about menstruation that has lasted for a day and a night, another one would be cognizant of a case that lasted for one day.

We cannot deny what we do not know; and if we made the limit of Sharia according to what we knew by saying: «The minimum period for menses is not less than three days, a day and a night or one day» because we do not know but that, then this would be an act of legislating on our part now that we know, and that is because not knowing does not mean knowing that something is non-existent.

If this was similarly Sharia prescript, the Messenger, may the blessings and peace of Allah be upon him, would know about and explain it better than we do, as he set for the Muslim community things that Allah prescribed for them, such as time for offering prayers, performing pilgrimage and fasting, and places of pilgrimage and minimum amounts of property liable to payment of the Zaka as well as its distributive shares, and the number of times for offering prayers as well as of bending and prostrating during them.

If Allah and His Messenger had set limits for menstruation and other things which have not been given a definite length of time by the Prophet, they would have been shown by the prophet. And since he did not set limits for them, then this indicates that he left this matter to be decided upon by what is experienced by women. That is why many «predecessors», when asked about menstruation would answer: «Ask women, for they know better about that,» i.e. they know what is menstruation and what is not (50).

What Sheikh Al-Islam stated about generality of the texts that refer to this matter and about the fact that there is no text which set minimum and maximum period for menses and that there is no text which sets an age in which a woman has menses or in which menstrual flow stops is undoubtedly correct. Texts that set a maximum period for the puerperium were tackled by the Ulama.

Yet, what is the objection to referring these matters to custom and habit? Sheikh Al-Islam views that the factual habits of women are unstable and uncontrolled. I agree with him that determination of that is a difficult thing but it is not impossible. Many Ulama admitted its difficulty in the past and some of those Ulama were doctors.

Showing the difficulty of defining minimum and maximum periods for the puerperium, Ibn Rushd stated «Difference of their viewpoints is due to difficulty of defining that through experience on account of diversity of women's habits in respect of puerperium and owing to the fact that there is no tradition to be followed in such a matter, as it is the case with their differences as regards (number of) days of menstruations and purity (51).

Referring to difference of opinion on whether a woman menstruates or not during pregnancy, he said: «Their difference is due to difficulty of determining that through experience as well as to confusion caused by two facts; blood that is seen by the pregnant woman is, at times menstrual blood in case that the woman is considerably strong and the newly born baby is also so, and therefore this can be attributed to what was reported by Hippocrates, Gallen and other doctors, and at other times the blood that is seen by the pregnant woman is attributable to weakness and illness of the baby which reflects her own weakness and illness. Mostly the blood is due to a specific cause and an illness (52)».

Accordingly, many jurists have changed hteir opinion as regards defining minimum and maximum periods for menses and puerperium, for they had learned of some women's habits that conflicted with their

knowledge. That is why three different opinions are ascribed to Imam Malik on the maximum period for menses, and two different opinions on maximum period for puerperium. Imam Ahmad once said that maximum period for menses was fifteen days, and at another time said that it was seventeen.

Some meticulous Shafi'ite Ulama have, even, declared that they would recant their opinions on minimum period for menses if a woman was found to have menses for less than a day and a night. Among those who stated this; were Abu Ishaq Al-Asfrayini, Al-Qadi Husain and Al-Darimi (53).

Menarche and Menopause:

Ibn Qudama said «The least age for having menses is nine, because a young girl does not menstruate for Allah, says:

AS ALSO OF THOSE WHO HAVE NOT YET MENSTRUATION (54)

as well as for the fact that the reference for this is what is actually experienced in this connection, that there is no woman who has had menses before attaining this age, and for the fact that menstrual blood has been created by Allah for the reason of feeding the conceived being, therefore, whoever is not eligible for conception, forfeits the rationale for having menstrual blood, as it is the case with semen, they indicate the same thing, i.e. one of them is used for creation of child and the other is used to rear and feed it. Neither of them is found in a young person, and its existence is a sign of puberty and the least age for a girl to attain puberty is nine, therefore it is the least age for having menses. Ai'sha was reported to have said:

"When a girl attains nine years, she is a woman."

This was also related with ascription to the Prophet, may the blessings and peace of Allah be upon him. It means: that what is applicable to a woman is applicable to her, and this is the opinion of Al-Shafi'i and he reportedly, said: I have known a grandmother who was twenty one. This indicates that she became pregnant at an age less than ten, and that her daughter conceived at a similar age (55). This is also the opinion held by the Hanafites (56).

Imam Ahmad reportedly held different opinions regarding the time called menopause, at which a woman's periods stop. Al-Kharqi reported that woman does not despair of menstruation until she is sixty. As for the

blood she experiences between fifty and sixty, it is doubtful that it is menstrual blood and therefore offering of prayers and fasting are not to be given up for it, and fasting of days missed is to be observed as a precautionary measure. Another report indicated that he was of the opinion that woman does not menstruate after fifty. This was also the opinion of Ishaq Ibn Rahawayh. It was also reported to be stated by A'isha with ascription made only to her.

Ibn Qudama reported that some Ulama differentiated between women according to race and place; there are races whose women attain menopause at late age, while others attain it earlier, and some places help delay menopause.

Some Ulama view that there is no definite age at which menopause is attainable, periods may continue, they argue, until the end of life (57). This viewpoint is held by Sheikh Al-Islam.

Blood Discharged During Pregnancy:

Ulama's opinions differed both in the past and at present, as to the nature of blood discharged by some women during pregnancy, as whether it is waste or menstrual blood. Imam Abu Hanifa and Ahmad maintained that it was not menstrual blood.

This opinion was also maintained by Ibn Al-Musayyib, Al-Hassan, Ata'; Muhammad Ibn-Al Munkader, Akrama, Jabr Ibn Zeyd, Al-Shiabi, Mak'houl, Al-Zuhairi, Al-Hakam, Hammad, Al-Thauri, Al-Awzai, Abu Youssef, Abu-Thawr, Abu Ubeid and Ibn Al-Mundhir. Ibn Qudama said «It is the opinion of the majority of the followers of the Prophet's Companions)».

Imam Malik, and Imam Al-Shafii were of the opinion that it was menstrual blood. Qatada and Al-Laith held the same opinion.

This controversy is only over the nature of blood discharged by a pregnant woman before she has labour pains. But as for the blood discharged after she has had labour pains, their opinions concur that it is puerperal blood (58).

Those who maintained that it was menstrual blood based their argument on that «It is blood that carries the qualities of menses and is discharged at the time when it is possible to have menses, and because the possibility does exist that it is either pathological menstruation» Al-Nawawi said (59).

Ibn Qudama based his opinion that it was menstrual blood on the basis of the Hadith related by Imam Ahmad on the authority of Salim from his father who said that he had divorced his wife while she was menstruating, whereupon Omar asked the Prophet and he said «Command him to take her back and keep her and pronounce divorce when she is purified or pregnant (60). He has made pregnancy a sign of non-existence of menstruation exactly as he has made purity a sign of that. He also based argument on the fact that women do not get menses during pregnancy in most cases.

Minimum and Maximum Periods for Pregnancy:

Our Ulama almost by consensus agree that the minimum period for gestation is six months. The Qur'an specifies that the period of pregnancy and suckling is thirty months,

AND THE BEARING OF HIM AND THE WEANING OF HIM IS THIRTY MONTHS.

It states, in two places of the Book, that the period for breast feeding is twenty four months,

AND MOTHERS SHALL SUCKLE THEIR CHILDREN TWO WHOLE YEARS; THIS IS FOR WHOM, WHO INTENDTH THAT HE SHALL COMPLETE THE SUCKLING

and it says

AND HIS WEANING IS IN TWO YEARS ;

if you substract the period of suckling, which is two years, from the thirty months, which is the period of pregnancy and suckling, six months remain, which is the period of pregnancy. Ali Ibn Abi Talib and Ibn Abbas, invoked these verses, as basis for exoneration of the woman, who had given birth after being pregnant for less than nine months, from accusation of adultery.

Imam Ahmad and Al-Shafi'i maintained that the maximum period for pregnancy was four years, and this is the opinion that is widely known to be maintained by Malik.

Ahmad had, reportedly, maintained that it was two years. This is reported to have been the opinion of A'isha. It is also the opinion held by Al-Thawri and Abu Hanifa on the basis of what Jamila Bint Saad narrated that Ai'sha had said,

«A woman does not exceed two years of pregnancy»

and also on the basis that setting of a limit is known through a prescribed text or consensus agreement; and here there is neither an available prescribed text nor an agreement; there is only what we have previously referred to, and that is available, for the mothers of Al-Dahak Ibn Muzahim and Haram Ibn Hayan had both been pregnant with them for two years. Al-Laith said: «The maximum of it is three years, a slave of Omar Ibn Abdullah was pregnant for three years». Ubadah Ibn Al-Awwam said that it was: five years.

Al-Zuhairi said: A woman may be pregnant for six years, and seven years». Abu Ubeid said «There is no maximum period for it.

Ibn Qudama defended the argument, in ((Al-Mughni)), that the maximum period for pregnancy is four years by saying, «a pregnancy was found to have lasted for four years»; Al-Walid Ibn Muslim related that he had asked Malik Ibn Anas «what about the Hadith narrated by Jamila Bint Saad that A'isha had said, A woman does not exceed two years of pregnancy?».

Malik said «Allah be praised, who could say that? This is our neighbour, Muhammad Ibn Ajlan's wife remains pregnant for four years before she gives birth». Al-Shafi' said: «Muhammad Ibn Ajlan remained in his mother's womb for four years». Ahmad said «Women of (the tribe of) Bani Ajlan remain pregnant for four years. The wife of Ajlan got pregnant three times, and each time she was pregnant for four years, and Muhammad Ibn Abdullah Ibn Al-Hassan Ibn Ali remained in his mother's womb for four years, so did Ibrahim Ibn Nujeih Al-Uqeily. This was reported by Abu Al-Khattab». He further said, «If this is proved to be true, it should then be acted upon and never be exceeded, since it is what really exists, and due to the fact that Omar had specified four years as a waiting period for the wife of a missing man, and it was only because this is the maximum period for pregnancy. The same thing was reported to have been done by Othman, Ali and others».

He based on this the reasoning that if a woman gives birth in four years or less from the date of death of husband or of divorce, and has not remarried, had sexual intercourse or her «idda» has not lapsed by waiting for the (prescribed three) courses (i.e. three-menstrual periods), or by giving birth the child is attributed to husband and her «idda» lapses by giving birth (61).

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2. (Lissan Al-Arab): 1/770.
3. (Al-Majmou) by Al-Nawawi; 1/342.
4. (Tafseer) Al-Qurtubi: 3/82.
5. (Nail Al-Maarib): 1/104.
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21. (Al-Mughni) by Ibn Qudama: 1/349.
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33. (Al-Rawda Al-Nadiyya): p. 63.
34. The Aggregate Opinions of Sheikh Al-Islam: 9/239.
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HYMENORRHAPHY FROM AN ISLAMIC PERSPECTIVE

His Eminence, Sheikh E.A. Al-Tamimi
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I have read the paper on «Hymenorrhaphy», presented by Prof. Dr. Kamal Fahmi Abdulqader.

It discussed the form, shape and features of the hymen, the view of variolis people as regards the hymen and the relevant medical problems of hymenorrhaphy and finally the attitude of doctors concerning this question.

The research has also involved a synopsis on the operations of hymenorrhaphy and the questions which warrant the opinion of religion.

First:

In case a bride is brought to the doctor by her husband, because there was no defloration bleeding and the husband doubts that his wife was virgin:

1. In case an elastic hymen exists, then there is no problem and the doctor informs the husband of the case and explains it to him, and there will be no deception involved.

2. In case there is an old tear in the hymen, should the doctor inform the husband or not?

Second:

In case a girl lost her virginity and is seeking·a hymenorrphaphy:

1. Should the doctor refuse in all cases?

2. Should he accept in all cases?

3. Should he estimate the situation in each single case, and perform the operation, if it entails the lesser of two evils?

Third:

Young female children with hymenal tear due to accident or rape and the doctor is certain of this:

1. Should he refuse to perform an operation of hymenorrhaphy in all cases, and feel content with releasing a medical certificate to the family indicating the reason of rupture?

2. Should he perform the operation if the girl was 15 years old, or above the age, or delay it if she is under that age?

Significance of Questions

Such questions are the ones included in the formerly mentioned research.

Such questions are significant and deserve the attention of religious scholars. They are also worthy of the endeavours of such scholars to determine the attitude of the upright religion of Islam towards them.

If the attitude of committed Muslim doctors towards such cases, is delicate and critical, they are even more so for Jurists and religious scholars, because when they give an answer to such questions, they, in fact, put forward to communities the provisions relevant to the honour and moral dignity of Muslims and their kinsfolk. Answering such questions is a great trust to which they are committed, and a strenuous task they struggle hard to fulfill, in addition to the fact that jurists and scholars are shouldered with a religiously - imposed responsibility, a moral one indeed before the community and history. It is known a priori that right is worthier to be observed.

Chastity and The Community's Integrity

A sound community is the one in which virtuous morals and sublime values pervade. It is the duty of scholars to morally and spiritually quide the populace.

The Prophet said:

"I was sent ot perfect the best of morals (1)."

Chastity is a deep-rooted Islamic attitude, a characteristic of noble manners which distinguishes the upright religion. Chaste individuals form a chaste society.

Chastity and purity of the individuals are present in a pure and chaste society. This concept is clearly manifest in the Quranic verses and Prophetic Hadiths inter alia, Allah, highly exalted be He, says:

AND PAST CHILD-BEARING WOMEN WHO HAVE NO HOPE OF WEDLOCK UPON THEM IT IS NO FAULT THAT THEY LAY ASIDE THEIR OUTER GARMENTS, NOT FLAUNTING THEIR ADORN-MENT. AND THAT THEY SHOULD VESTRAIN THEMSELVES IS BETTER FOR THEM, ALLAH IS HEARING, KNOWING (2).

Allah, also says:

AND THOSE WHO FIND NOT MEANS TO MARRY SHALL RES-TRAIN THEMSELVES UNTIL ALLAH ENRICHETH THEM OF HIS GRACE (3).

He also says:

SAY THOU UNTO THE BELIEVERS THAT THEY SHALL LOWER THEIR SIGHTS AND GUARD THEIR PRIVATE PARTS, THAT IS CLEANER FOR THEM, VERILY ALLAH IS AWARE OF THAT WHICH THEY PERFORM. AND SAY THOU UNTO THE BELIEVING WOMEN THAT THEY SHALL LOWER THEIR SIGHTS AND GUARD THEIR PRIVATE PARTS AND SHALL NOT DISCLOSE THEIR ADORNMENT EXCEPT THAT WHICH APPEARETH THEREOF (4).

The Prophet says:

"O young people! whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty, and whoever is not able to marry, should fast, as fasting diminishes his sexual power (or desire) (5)».

The Prophet, also says:

"There are three persons who Allah Himself has undertaken to help - he who fights in the cause of Allah, he who seeks to buy his freedom and he who marries with a view to chastity" (6).

Defaming, even by a single word, such chastity is a great sin deserving severe punishment upon the defameras Ellah, says:

WHOEVER ACCUSES CLEAN WOMEN AND THEN BRING NOT FOUR EYEWITNESSES, SCOURGE THEM WITH EIGHTY

STRIPES AND ACCEPT NOT THEIR TESTIMONY FOR EVER AND THOSE! THEY ARE THE TRANSGRESSORS (7).

Moreover, the Prophet, also considers accusing chaste, unknowing, believing women a deadly sin, and further a serious cause behind the ruin and destruction of communities.

This is a quick glimpse at the attention paid by Islam towards chastity, purity and moral dignity, in contrast with other contemporary ideologies.

That is why Muslims have kept up, during the course of history, treasuring chastity and the observance of moral dignity, deeming such concepts to constitute the noble manners of religion.

The Muslim woman looks forward to a chaste and pure matrimonial life. She abstains from looking at men-other than her husband. The Muslim man also aspires to a pure and chaste matrimonial life, abstains from looking at women, except his wife, and does not seek the forbidden.

Allah, highly exalted, glorified be He, says:

BLESSED ARE THE BELIEVERS. THOSE WHO IN THEIR PRAYER ARE LOWLY, AND THOSE WHO FROM EVERYTHING VAIN TURN AWAY. AND THOSE WHO FOR THE SAKE OF PURIFICATION ARE DOERS, AND THOSE WHO OF THEIR PRIVATE PARTS ARE GUARDS, SAVE IN REGARD TO THEIR SPOUSES AND THOSE WHOM THEIR RIGHT HANDS OWN; SO THEY ARE NOT BLAMEWORTHY, AND WHOSOEVER SEEKETH BEYOND THAT THEN IT IS THESE WHO ARE THE TRANSGRESSORS (8).

This is the case with each Muslim, male or female, believing in Allah and the Hereafter.

Importance Attached to the Hymen By the Jurists

Jurists have mentioned and defined «virginity», and have also reviewed the pertinent provisions - Moreover, they have differentiated between it and non-virginity in many provisions.

It is mentioned in the book «Al-Gamee Li Ahkam Al-Qur'an» 18/194 that:

«The «Maiden» is the «Virgin», who is so called because she maintains the first state in which she was created». It is also said in «Al-Mabsout», by Imam Al-Sarkhasi that: «In Arabic, the word «Maiden» is given to a woman yet to have the «first» coitus in her life, that is because «maiden» is, linguistically, the very beginning of something, that is how in

Arabic we refer to the beginning of daybreak by deriving from the same root, and likewise, the first fruit of something is referred to by another derivative».

Also it is stated in the «Al-Fatawi Al Hindiya», 1/290 that:

If a woman's virginity is eliminted by a fall, menstruation, surgery or spinsterhood, then she is to be treated as virgin (9). However, if virginity is eliminated by fornication the same is applicable to her in the opinion of Abu Hanifa, may Allah have mercy upon him. To them her silence is not enough, if she is brought out and the prescribed Qur'anic punishment is applied to her, the sound opinion is that her silence is not enough, and the same is true if fornication becomes her habit as stated in Al-Kafi».

If the virgin's husband dies after living in privacy with her, before consummating marriage, then she is to be later married as a virgin. The case also applies when separation occurs between the impotent husband and his wife, and when a woman's virginity is eliminated through cleaning the private parts with a hard object. But if it is eliminated through illegitimate intercourse, or when there is suspicion as to her being slept with a man, then she gets married as a non-virgin woman, as stated in «Al-Kholasah».

Purity, chastity and virginity are the qualities of the believers. The Munificent Qur'an makes the beliervers crave after paradise, and promises to reward them with the dark-eyed, chaste and undeflowered damsels with refraining looks. Allah, highly exalted be He, says:

THEREIN SHALL BE THOSE OF REFRAINING LOOKS WHOM BEFORE THEM NEITHER MAN NOR JINN HAD DEFORATED (10)

Aisha, may Allah be pleased with her, boasted of virginity in the hands of the Messenger of Allah, and said:

"O Allah's Messenger! suppose you landed in a valley where there is a tree of which something has been eaten, and then you found trees of which nothing has been eaten, of which tree would you let your camel graze? He said, «(I will let my camel graze) of the one of which nothing has been eaten before (11).

Deceit is Forbidden In Islamic Sharia

Islamic Sharia categorically forbids deceit, swindle, harming people and fraud, whether in contracts of sale or marriage contracts, in

expressing opinion, or performing works, as established by the authentic Hadiths of the Prophet.

The Prophet says:

"He who acted dishonestly is not of us (12)."

And also says:

"He who acts dishonestly towards us is not of us" (13)

And on the authority of Abu-Surmah the Prophet said:

"He who harms a Muslim Allah will harm him, and he who puts a Muslim into duress Allah will put him into duress." (14)

This means that any one who inflicts harm upon a Muslim in his proprety, life or moral dignity, with no right will be avenged by Allah, who will punish him in the same way, and inflict similar harm upon him.

Is there any harm more detrimental than staining the honour of a Muslim? The Messenger of Allah, may the blessings and Peace of Allah be upon him says:

"One who deceives a Muslim and harms him, is not of us" (15).

Ibn Katheer narrated that the Messenger, married a woman from Banu Ghaffar, when she came in to him he saw she had leukoderma in the region of the lip, so he sent her back to her people and said:

"You have acted fraudulently towards me" (16).

On the authority of Ibn Al-Mussayab, Omar Ibn Al-Khattab said:

"Any man who marries a woman and consummates marriage then finds her suffering from leprosy, insanity or gafeira, she deserves her dowry because he slept with her and he deserves indemnity from the one who cheated him" (17).

Al-Shafi'i says: «that is because of the forfeiture incurred upon him».

Islam Exhorts Muslims Not To Uncover Weaknesses

The upright religion commands Muslims not to expose weaknesses, and forbids spreading vile deeds. Such concepts constitute a clear Islamic attitude, which is obviously manifest in many texts of the Sharia.

Allah, highly exalted be He, says:

VERILY THOSE WHO LOVE THAT INDECENCY SHOULD BE PROPAGATED REGARDING THOSE WHO BELIEVE, FOR THEM SHALL BE A TORMENT AFFLICTIVE IN THIS WORLD AND THE HEREAFTER. AND ALLAH KNOWETH AND YOU KNOW NOT.

Allah, highly exalted be He, also says:

O YE WHO BELIEVE, FOLLOW NOT THE FOOTSTEPS OF SATAN. AND WHOSOEVER FOLLOWETH THE FOOTSTEPS OF SATAN. THEN HE ONLY URGETH TO INDECENCY AND ABOMINATION (18).

The Messenger of Allah, says:

"He who sees a «private part» and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life" (19).

The Messenger of Allah, may the blessings and peace of Allah be upon him, also says:

"He who does not expose the «private part» (weakness) of his Muslim brother, Allah shall not expose his on the Day of Judgement, and he who exposes the «private part» (weakness) of his Muslim brother, Allah shall expose his till he is exposed in his own house" (20).

He also says:

"He who does not expose a Muslim, Allah shall not expose him neither in this world nor in the Hereafter" (21).

He also says:

"He who knows of a wrong doing by his brother and does not expose it, Allah shall not expose him on the Day of Judgement" (22).

Jurists argue: a witness is entitled not to give a testimony (by exposing), if he sees a benefit in this. If the witness believes that a benefit can be derived from his testimony, then he must give it. In case he does not see any benefit to be derived from his testimony, then the nearest approach is not to stand witness (23).

Al Hafiz says: «The believer does not expose and he gives advice, whereas the profligate discloses and exposes weakness».

Some scholars said, advising those who command that which is reputable:

«Exert your utmost not to disclose the acts of the disobedient, because exposing «private part», is a weakness in their being Muslims, and what deserves most not to be exposed are the «private parts» (24).

It is said in «Al-Riaaia»: It is forbidden to disclose the hidden secret (25).

It is obviously clear, then, that not exposing (a weakness) is a religious characteristic as well as a moral value.

Hymenorrhaphy

Hymenorrhaphy is not mentioned in jurisprudence reference books, since it is a modern innovation. Therefore, passing a legal consequence as regards this question requires a thorough study of the intentions and provisions of the Islamic Sharia. It is imperative to exert the utmost to reach a legal consequence deduced from the lawful evidences, and the general rules of the Sharia, so that the attitude of Muslims towards this question may be clear-cut.

A hymenal tear does not inevitably mean that the girl had sex, as the rupture may be the result of a foreign body in the genital tract during masturbation, or may also be accidental like a fall on a protruding object. Rupture may also accur when a finger or a foreign body is inserted in the genital tract of a girl in an act of revenge (26).

Intact Hymen Helps Maintain Chastity

The wisdom of Allah ordained to create man in the best moulding. He says:

WE HAVE CREATED MAN IN THE GOODLIEST MOULD (27).

Each organ in the human body has a function and a benefit. It is unequivocally true that Allah has a wisdom in creating the hymen and by no means for no purpose. The hymen is a factor which helps to maintain chastity and honour. It curbs the perpetration of wrongdoings with virgin girls, as it prevents them from committing fornication, and also prevents men from this sinful act.Although the hymen does not necessarily indicate purity and chastity, it is a strong incentive against fornication among us Muslims.

Ibn Qudama in his book «Al-Mughni», 8/208 says: «Virginity is proven by the testimony of women. Its existence apparently prevents fornication, because fornication is not complete unless with insertion into the girl, a

matter inconceivable with the existence of the hymen, because a virgin is the female who does not undergo a sexual intercourse from the front, and if fornication is non-existant, no prescribed punishment is applicable» unquote.

Hymenorrhaphy Between Benefit And Harm

This question pertains to progeny, honour, chastity and dignity. It swings in man's mind between benefit and harm. In one aspects, one may hold the view that benefit can be derived from it in the sense that it means not exposing people, and concealing a heinous crime committed against morals. In the other aspect, it may be looked upon as a detrimental matter, as it involves fraud, deceit, swindle and falsehood. Furthermore, it may encourage sin.

Does the aspect of the preservation of moral dignity gain predominance and so a doctor may be allowed to perform an operation of hymenorrhaphy? or is the other aspect of harm given preponderance and the doctor is disallowed to accept to do the operation?

Such question is governed by the general Sharia rules, among which are the following:

1. In case benefits and harms get together, if it is possible to derive the benefits and avert the harms, then we have to do so in complaince with the command of Allah who says:

WHEREFORE FEAR ALLAH AS MUCH AS YE ARE ABLE

In case it is difficult to ward off evil and get the benefit, if harm is greater than benefit, then we have to avert the harm, and never mind missing the benefit (28).

If we look upon hymenorrhaphy in the light of such rule which governs the conflict of human harms and benefits, namely the adoption of the lesser of two evils, if not the averting of both, we shall endure the minor harm for the sake of averting a greater one.

It is our judgement that a doctor's refusal to perform hymenorrhaphy is the right attitude, in conformity with the provisions and general rules of the Sharia, as to perform such operation opens the door for doctors to play with the destiny of humanity without being heedful of the wrath and discontent of Allah.

2. Among the lawful rules agreed upon the Ulama is «Harm is not repelled with harm» From such rule branches another subsidiary one that

one is not permitted to avoid his land being flooded, by channelling flood to someone else's land, nor to maintain his property by harming the property of others.

It is impermissible there for a girl to eliminate a harm inflicted upon herself to at the price of cheating her future husband.

3. Another Sharia rule is: «One has to endure the private harm to drive away a public one». One of its branches is that: A murderer must be killed to ensure security of the lives of people.

The principle of hymenorrhaphy is an unlawful one, as it involves fraud, which is forbidden by the Islamic Sharia. Such principle reflects obvious deceit in a matter of honour, and contradicts with what the Messenger said:

> *"None of you will have faith till he wishes for his (Muslim) brother what he likes for himself".*

And in another Hadith,

> *"and hate for you (Muslim) brother what you hate for yourself".*

Would the doctor, who performs Hymenorrhaphy for a girl, like to marry her or any other one of similar circumstances? Obviously not.. but he cheats another man into it.

Moreover, opening the door for hymenorrhaphy under the guise of noble covering, and driving away harm entails other detriments of graver consequences and paves the way for many evils such as:

1. The girl who undergoes a hymenorrhqphy operation may be pregnant and hides it, and a few days following the operation she gets married to a man to whom the child will be ascribed, thus viciating lineage with all the complication there of.

2. Hymenorrhaphy opens the door for doctors to resort to performing abortion under the guise of not exposing weaknesses and under the pretext that happened was the result of the sin of fornication.

3. Hymenorrhaphy includes knowledge of abominable deeds and assistance in wickedness. Um Salamah said

> *"shall we be destroyed though there are righteous people among us? The Prophet said, Yes, if evil spread".*

The Ulama explained (evil) as children out of wedlock. «narrated by Ibn Abdulbar» (29).

4. It becomes easy for girls to perpetrate the fornication, as they know about the possibility of having hymenorrhaphy to bury the sin an conceal it.

5. Hymenorrhaphy incites girls and their families to lie in order to conceal the real reason for nuding it falsehood is impermissible and forbidden in the Sharia of Allah.

No Benefit Is Derived From Hymenorrhaphy

Whatever the reasons behind the rupture or elimination of the hymen are, no benefit can absolutely be derived from hymenorrhaphy, because if the reason is uncontrollably beyond one's power, then, the case can be shown to doctors to decide the real reason, and provide the girl with an official certificate, in accordance with an official indicating the lawful acquittal of the girl before her family and society, as the reason behind rupture or elimination of her hymen is beyond her power, and hymenorrhaphy, in this case, is not for the interest of the girl, nor for that of the family, because it could be discovered by the husband at or after the wedding night, and then it comes to his mind that he has been deceived and duped. More often, the husband will not maintain silence; and consequently, far-reaching social problems arise, he may divorce her at the wedding night, kill her, and an unwarranted scandal may erupt.

Hymenorrhaphy may pave the way for rumours to chase the wife. It can be a sword drawn at her neck for blacknail if the secret leaked.

A case In Which The Aspect Of Not Exposing is given preponderance

If husband suspects that his wife was not virgin and lets a doctor see her, then the doctor finds an old rupture in the hymen, then he should not inform the husband, rather he should give preponderance to the aspect of not esposing the wife. When the doctor does not inform the husband of that old rupture, he does not violate the morals of the medical profession, nor the legal oath which he has taken, because the old rupture in the hymen does not necessitate that she had perpetrated the sin of fornication. In many cases, the hymen is eliminated due to reasons other than sin. It is beyond doubt that the doctor's reporting of that rupture involves harm upon the one who should not suffer the detriment, a matter looked upon as heinous in the Sharia. No one is allowed to act on suspicion or assumption.

The Messenger of Allah, may the blessings and peace of Allah be upon him, says:

"Diffuse punishments by doubt. Ward off sentencing Muslims to death as far as you can"

And Omar said, «It is better for me to make a mistake in not applying a prescribed punishment on suspicion than applying it on suspicion» (30).

On the authority of Ibn Al-Hazzal after his father, the Messenger of Allah said:

"O Hazzal, had you covered (not exposed) him with your garment, it would have been better for you".

Shu'ba said, Yahia said I mentioned this Hadith at a meeting in which Yazeed Ibn Naem Ibn Hazzal was present, Yazeed said: That is true, this Hadith was narrated by my grandfather (31).

Annotations

1. See: Ibn Al-Atheer, «Gamiee Al Osoul Fi Ahadeeth Al Rasoul» 4/4.
2. Surat Al-Nur, verse (60).
3. Surat Al-Nur, verse (33).
4. Surat Al-Nur, verse (30-31).
5. Al Bukhari and Muslim. The version is same by both of them, Abu Dawud, Al-Termidhi and Al-Nisaai.
6. Related by Al Termidhi. The version is his, and said sound Hadith and approved. Also it is found in Ibn Habban in his Sahih and in Al-Hakam, and he said «it is sound» according to Muslim.
7. Surat Al-Nur, (4).
8. Surat Al-Mu'minun, (1-7).
9. That is her silence is a sufficient sign implying consent at engagement.
10. Surat Al-Rahman, verse (56).
11. Al-Sarkhasi: *«Al Mabsout»,*.
12. Sahih of Abu-Dawud (372), Takhreg Al-Tragheeb Wal Tarheeb». 1/347, The Hadith is sound, narrated by Aus Ibn Aus.
13. «Al-Irwaa», (1307), «Ahadeeth Al-Beyoua'a», Sound Hadith from Abu Al-Hamra', see Sahih Al Gamiee Al Sagheer, and its additions, (6282).
14. Quoted by Abu Dawud and Al-Termidhi, and said «Sound» (4-294) «Sobol Al-Salam».
15. Narrated by Abu-Naem: see «Al Zawajer An Iqteraf Al Kabaaer», by Ibn Hajar, 1/65.
16. «Sobol Al-Salam», (3-154).
17. Quoted by Said Ibn Mansour, Malik, Ibn Abi Shaibah and other reliable men, see «Sobol Al Salam», (3/155).
18. The two verses (20-21) are from Surat Al-Nur.
19. Related by Al-Tabarani, «Al-Zawajer», (2-101).

20. Narrated by Ibn Magah with sound ascription. «Al Zawajer» (2-100).

21. Related by Muslim and Abu Al-Dardaa.

22. Related by Al-Tabarani as transmitted by the Sahihists. «Al Zawajer», (2-101).

23. Ibn Hajar: «Al Zawajer», (2-101).

24. Al Safareeni Muhammad, «Ghizaa Al-bab Bisharh Manzoumat Al-Aadab», (1089).

25. Ibid.

26. Ahmad Shawkat Al Shatti, and Ziad Darwish «Forensic Medicine», (268).

27. Surat Al-Teen, verse (4).

28. «Qawaid Al-Ahkam», vol. I/89.

29. Muhammed Zakaria Al-Kand Halwi, «Awjaz Al-Massalik ila Mawttaa Malik», (13-253).

30. «Nail Al-Awtar» (7/272).

31. Related by Abu Dawud.

HYMENORRHAPHY IN THE BALANCE OF SHARIA INTENTIONS

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The hymen is a fold of tissue partly closing the vagina of a woman. It is also called the virginal membrane. A virgin is a woman who has not been deflowered, and the maiden is the girl who has never experienced the act of sex. Virginity may also be applicable to a man who has had no sexual intercourse.

Hence came the Hadith:

"When an unmarried male commits fornication with an unmarried female (they should receive) one hundred lashes and banishment for one year" (1).

The hymen, like all other parts in the body, is liable to damage, partial or total, due to any accident, deliberate or undeliberate, a divine affliction, or a human conduct, whether indicating in itself sin, or not.

Social customs and conventions attach due significance to the hymen, deeming its existence in the maiden girl an evidence of chastity, and its rupture before marriage a sign of moral corruption, a matter which brings about a hostile reaction of the husband, the girl's family and people, from mere doubts and suspicions, to ruining the new family and inflicting harm upon the accused girl.

Hymenorrhaphy is to bring back the hymen to the former state before rupture, and operation demanding the expertise of specialists.

This research deals with the Sharia legal ruling of such act concerning the doctor who performs the operation of hymenorrhaphy.

The approach adopted in the deduction of the legal rulings governing human behaviour first rests upon compliance with the Texts, and if not covered, then we have to look for similar cases provided for in the Texts, and resort to analogy; otherwise, we have to hold discretionary opinions for the deduction of legal consequences by seeking compliance with the Sharia's prescripts, spirit, intentions and general rules, considering the benefits and harms ensuing from such behaviour, and giving preponderance to some behaviours over others.

Hymenorrhaphy is a recent issue, undealt with in any text of the Sharia, explicity or implicitly, nor did jurists try to demonstrate its legal consequence due to its inconceivability at their age. Hymenorrhaphy had no precedence at the time of legislation to serve for analogy. So, nothing can be done but to consider the spirit, intentions and general rules of the Sharia, as well as the benefits and harms ensuing from such a human conduct.

So, we shall deal with this question under three studies and a conclusion:

Study I:

Demonstrating General Benefits and Harms of Hymenorrhaphy.

Study II:

Demonstrating Discrepancy Between Benefits" Harms in respect of the cause of loss of virginity and How to Strike a Balance Between them.

Study III:

Demonstrating the Attitude of The Doctor Towards such Cases in relation to such legal rulings and clarifying some confusions.

STUDY I

General Benefits¨ Harms of Hymenorrhaphy

First Point: Benefits of Hymenorrhaphy

(A) Benefit Of Not Exposing (Weaknesses):

Providing coverages for the girl by repairing the hymen may prevent great risks.

Coverage is not confined to mere abstention from disclosing the secret, because this implies a passive attitude, whereas performing the operation of hymenorrhaphy is a positive attitude, yet both attitudes seek the avoidance of scandal and censure.

Such avoidance is not achieved for the virgin girl except through the second attitude, whereas the first one is of no benefit to her to achieve such an end, in the light of the afore-mentioned conventions. Yet, mere secrecy will benefit others such as the man and the non-virgin but not the unmarried (see Study II).

Coverage (of weaknesses) is a Sharia intention of great significance, and is established by the Sunna.

The Messenger of Allah, peace of Allah be upon him, says:

"The person (who does not expose) the faults of others in this world,Allah will not expose his faults on the Days of Judgement" (2).

He also says:

"No believer will see a «private part» of his (Muslim) brother and does not expose it, but Allah shall let him enter paradise for that" (3).

And also says:

"He who sees a «private part» and does not expose it, his act will be tantamount to bringing a newborn girl buried alive back to life" (4).

He also said to Hazzal who knew that Maiz committed fornication:

"Had you covered (not expose) him with your garment, it would have been better for you" (5).

(B) Achievement Of Benefit Of Coverage Brings About Another Benefit:

This takes the form of saving a future family from breaking. If the doctor refuses to perform hymenorrhaphy and the girl gets married, then the husband discovers rupture in her hymen, here there is a probability that this new-born family is threatened to be nibbed in the bud, or at least disintegrates through distrust and lack of confidence between the two partners. It is indisputable that creating the closely related family through mutual trust is a Sharia intention.

(C) Protection Against Distrust:

When the doctor performs hymenorrhaphy, he enhances spreading of good intention among people, and closes a door through which, if opened, distrust can probably grow among people, which is forbidden by Allah, It may also result in the unjust accusation of innocent girls. The dissemination of good intention among believers is a lawfully important intention. Allah, says:

O YE WHO BELIEVE! AVOID MUCH SUSPICION, VERILY SOME SUSPICION IS A SIN. AND ESPY NOT, NOR BACKBITE ONE ANOTHER (6).

He also says:

WHEREFORE, WHEN YE HEARD IT, DID NOT THE BELIEVING MEN AND THE BELIEVING WOMEN THINK THE BEST ABOUT ONE ANOTHER (7).

The Messenger of Allah, says:

"Beware of suspicion (about others), as suspicion is the falsest talk" (8).

On the authority of Abdullah Ibn Omar, he said:

"I saw the Prophet, may the blessings and peace of Allah be upon him circumambulating the Kaaba and saying, How good you are, how good your fragrance is! How great you are and how great your inviolability is! By He in Whose Hands Muhammad's soul is, the inviolability of the faithful one is greater to Allah, exalted be He, than yours, so is his property and blood, and that nothing but that which is good should he thought of him" (9).

(D) Achievement Of Equality And Justice Between Man And Woman:

Whatever sin a man commits, his perpetration does not result in any physical stigma in his body, nor may give rise to any suspicion about him, unless it is proven through lawful means, whereas the virgin woman has become liable to social and conventional censure if her hymen is broken, even if no lawfully recognized proof evidencing her perpetration of sin is established.

Moreover, the married woman or the one previously married, like the divorcee and the widow does not receive that social and conventional censure, whatever sins she commits so long as the flawful evidences are insufficient to prove the act.

Upholding Justice among people in the Islamic law is a lawful intention, with tte exception of the perpetration proven by a lawfully recognized evidence. Neither the Islamic law nor the stipulations of Jurists denote specially particular methods through which the sin of fornication for the virgin girl should be proven.

Therefore, we find unanimity among Jursits that fornication is not proven by the mere discovery of hymenal injury for this has multiple causes. It it is not coupled with a confession, a testimony or pregnancy, then there is no legal evidence of a sexual act, and consequently, no punishment is imposed.

Jurists hold in general the opinion of equality between man and woman in the means for establishing evidence of fornication. Many of them view that such equality has no exceptions in the sense that no crime is proven except through the testimony of four men of honourable record, or the acknowledgement of the perpetrator until the establishment of the prescribed punishment against him/her is completed. The only exclusion upon which they disagree is the evidence of a single presumption as regards the woman, which is that of pregnancy of the unmarried woman.

Some Jurists view that such evidence is sufficient in establishing the proof of fornication against the woman, if she does not arouse a significant doubt around the crime, such as a forced rape (10). The majority of Jurists believe that such evidence is insufficient in establishing proof of sin, unless coupled with confession or acknowledgement (11). Concerning mere hymenal tear, we find none of them approving it as evidence of fornication, if not coupled with the other positive proofs (12).

It is assumed that no one should be accused through evidences and presumptions unrecognizable by unsubstantial to the Sharia in a society embracing Islam and governed by its values, morals and norms. This is the social arbitration of the divine law of Allah, which should be complementary to and harmonious with the legal and Judical arbitration. The Judgment of the divine law is not complete without this, i.e., making social norms, conventions and censure against any human conduct in compliance with the judgments pronouced by the judiciary and effected by the executive.

If some social norms and conventions are established at variance with the Islamic law, then the society falls in deviation that should be redressed through the diffusion of Islamic awareness on the one hand, rejection of any unlawful effects there-on the other hand, besides providing protection for those who suffer from that social deviation, who receive censure against things for which Allah, highly exalted be He, blames them not, in this world at least, and endure harrassment which has nothing to do with the Sharia.

As afore-mentioned, the Sharia does not impose on a woman who suffers apparent rupture in the hymen any punishment in life, if not coupled with a confession by her, or a testimony by four men of honourable record against her.

Nevertheless, certain people in our societies impose on that woman punishments, some times exceeding those imposed by the Sharia on a virgin woman against whom fornication is proven through lawful procedures. Such punishments could, in some cases, be the reason behind ruining her matrimonial life, or her deprivation from marriage altogether.

In some societies, munishment may be as severe as killing her, and in such cases these societies install themselves as just judges who pass judgement unordained by Allah, the Mighty, and act on the basis of presumptions unrecognized by His upright law.

If, in many cases, changing such convention is a very hard job, then the least thing to do is to protect the woman against this social injustice through concealment of the presumption, disregarded by Sharia, from those who accordingly base injust judgements.

E. When a Muslim Doctor conceals this illusionary presumption (which is taken to signify the sin of fornication), then his act has a general educational impact on society, and another special one on the girl.

Concerning the general educational impact, if the sin is concealed-,then its harms confined, to a very limited range. The effect of that sin can be totally obliterated if the perpetrator repents. On the other hand, if sin is spread and reported among people, then its bad impact increases and people's fear of committing it decreases. If sin is repeatedly perpetrated, then the decline of fear increases until the social perpception of its detrimantal effects greatly shrinks, and if it reaches that extent, it becomes easy for individuals in society to make that sin. It has been said in this concern that:

«If sin is concealed, then its harm will be confined to the repetrator, but if disclosed and made known, then harm may be inflicted upon the public» (13). Perhaps, this implies part of the rationale behind not exposing weaknesses, a wisdom usually exhorted by Islam, as formerly mentioned. It can also reflect a rationale behind strictness as regards establishing the evidence of the sin of fornication and warding off penalty on the least doubt.

It can also be a wisdom behind the severe punishment stipulated by Islam against those who acruse people of sin with lawfully-significant evidence.

Among the intentions of such lawful teachings and provisions is to draw curtains over perpetration of sins and vile deeds, unproven through the lawful means of establishing evidence, and not brought before the Judiciary, so that the repugnant smell may not pervade among people causing reactions at first and then when such sins and vile deeds grow and pervade people become familiar with them as un-objectionable and unreprehensible. It is impermissible in Islam to disclose perpetration of sins and remove the curtains drawn by the Islamic teachings, except for one reason and that is when brought before court to be proven through the legitimate means. In this case, the perpetrator will receive the due punishment within the view and earshot of all people. The disclosure of punishment, in this case, is a means to maintain the perpetrated and disclosed sin within the sphere of reprehensibility.

When the doctor covers a girl by obliterating a sign to be taken by the future husband, and people after him as an evidence of fornication, though it is not so in point of truth and in the sight of the Sharia as well, then he fulfills the lawful intention, and impedes an unintentional act of normalization to acceptance of sins in the long run in which the social sense may, unawares, be trapped.

As far as the special educational impact on the girl is concerned, the doctor who performs hymenorrhaphy for her surely encourages her to turn to Allah in repentance, and facilitates this for her, that is if we suppose that she commited fornication, the doctor brings her back her chastity which she had before, assuming that the rupture was not due to a sin.

Wheras the doctor's abstention from performing operation, and closing the door before the girl to obliterate a blemish for which the society severely punishes, if she does not firmly believe in Allah and the hereafter, she may turn to a reverse reaction towards the abyss of vileness and the frequent perpetration of sin, specially that she does not fear elimination of the sign that pleases and convinces society of chastity and honesty, after she had lost it due to a reason beyond her power, or to a mistake she had commited. At that time when she will refuse offers of marriage and engagement through fabricated pretexts, thus she will fall and become a tool of corruption to herself and others in the society, although correction of the whole thing could be possibly made if the doctor responds to her appeal from the very beginning.

Second Point: Detriments ascribed to Hymenorrhaphy

1. Fraud And Deceit:

It occurs to the mind, in the first place, that when a doctor performs Hymenorrhaphy to a girl, then he commits an act of camouflage and deception against him who wants to marry that girl in future, in the sense that the doctor conceals from him a sign, that could be the outcome of a disgraceful conduct commited by that girl, and which if he had known through her, he would not have married her, and if he had known of it at consummation of marriage, he would not have continued marital life with her. lest she betrays or begets children who are not his.

This should never be overlooked, specially when we remember that Allah, highly exalted be He, addressed the believers in His Munificent Book that the adulteress or the disbelieving woman does not marry except an adulterer and a disbeliever as He, the Mighty, the Majestic, said:

> *THE AFULTERER WEDDETH NOT BUT AN ADULTERESS OR AN ASSOCIATORESS: AND THE ADULTERESS NONE WEDDETH HER SAVE AN ADULTERER OR AN ASSOCIATOR: AND THAT IS FORBIDDEN UNTO THE BELIEVERS (14).*

Some scholars were quoted as saying that if an adulterer marries a chaste woman and if an adulteress married a chaste man, seperation

between them should take place in compliance with the apparent meaning of the verse (15).

When the doctor perfoms hymenorrhaphy, then, his act could be a reason behind the continuation of a marriage not encouraged by the Sharia, in accoradance with the meanings understood in the munificent Qur'anic verse (15).

On the other hand, some Jurists maintained that the husband is entitled to annul marriage, if he had made virginity in his wife a condition but he discovered otherwise (16). The doctor, by performing this operation, deprives the husband of the right of annulment and deceives him with a false virginity.

2. Encouragement of Perpetration of Sin:

It may also occur to one's mind that when a doctor performs the operation of hymenorrhaphy, this act leads to the encouragement of perpetration of fornication in society, as through this, he obliterates a great deal of fear and sense of responsibility in any girl who lets herself be seduced to that sin of fornication. If the girl knows that the sin she perpetrates will leave behind some signs in her body, upon which the society imposes harsh punishment, and if she manages to escape from the Sharia- imposed punishment against such sin, if she realizes all this and perceives the future risks which await her fall in that sin of fornication, she may well refrain from its perpetration in preference to the principle of safety in life at least.

However, if she knows of the possible obliteration of the outcome of her crime, of the possible correction of what is caused through the sin, her perception of future risks dwindles, and then she feels encouraged to perpetrate further sins. A matter as such contradicts the spirit of Sharia in combating fornication, and closing all doors leading to it directly or indirectly. Hence the Qur'anic prescribed provision for fornication and or adultery was established, and so was the command not to expose the private parts, and that a man should not be left in privacy with a woman, nor to cast looks at her, nor that she travels without a chaperon in a degree of consanguinity precluding their marriage...etc.

Exposure Of Private Parts:

All Jurists deem a woman's vulva and the part around it to be strict pudenda that should not be looked at, nor touched by any one other than her husband. whether the one who looks at it or touches it is a man or a

woman (17). Hymenorrhaphy, however, categorically necessitates both looking at and touching it. Exposure of private parts, specially the strict pudenda is impermissible, except in a dire necessity or need. Medicine has not discovered yet any health benefit of the hymen. So the need which necessitates permissible exposure of private parts is not available, except merely when hemorrhage occurs due to rupture in the hymen.

STUDY II

Demonstrating Discrepancy Between Benefits and Harms In Respect Of Reasons Behind The Hymenal Tear and Striking A Balance Between Them

There are the harms and benefits for hymenorrhaphy, in general. Their materialization, in fact, varies according to the different reasons behind the damage in the hymen which usually are:

First:

Reasons, other than marriage, which are not considered sins in themselves.

Second:

perpetration of fornication with no force applied.

Third:

marriage and things attached thereto.

We now study the benefits and harms which may probably ensue from a rupture in the hymen through each reason in three points.

First Point: First Category

This category deals with the reasons which are not regarded in themselves as sins, nor result in misdeeds punishable in the Hereafter. To the contrary, they could be a motive to repentance and a curb preventing perpetration of sin, because they are accidents, diseases and misfortunes which are inflicted upon the girl and bring about rupture of her hymen, such as a fall, collision, the heavy weight, long period of spinterhood, too much menstrual blood and error committed in some surgical operations where the hymen is involved, and the like.

Attached to this is rape which a girl may suffer, even if she is mature and of age, she is powerless as regards the harm that may inflict her due to a forced sexual intercourse. Also the case applies to a sleeping woman or a young girl, who undergoes fornication due to a deceit, or so. Accountability in life and the Hereafter is lifted from young girls whatever sins they perpetrate, and the others who are compelled by force to commit them.

The prophet says:

> *"The pen is raised from three (are exempted from the accounts): a child till he reaches the age of puberty, a sleeping person till he awakes and an insane person till he becomes sane" (18).*

He also says:

> *"None of my nation is answerable for what is done by mistake, by forgetfulness or by way of coercion" (19).*

Hymenorrhaphy, perfomed in this case is assumed to completely achieve all the benefits formerly mentioned in Study ١, because the girls who fall into this are worthy of consideration, care and help. Allah and the people excuse them. If not esposing weakness, for instance, concerning those girls who actually perpetrate fornication, is recommended, in the light of the formerly mentioned lawful texts, then this category of girls who have not originally sinned or had no choice at the time of perpetration are truly worthier of help and not exposing them is a protection against unjust censure.

As regards the interest of good intention, when the doctor performs hymenorrhaphy for this category of girls, he contributes, to a great extent, to the achievements of this interest, as he obliterates, through his act, an illusory excuse, which may, if it remains blemish their honour amongst the society.

Moreover, he encourages this category of girls to seek intergrity, and shuts a door through which satan may enter if the doctor does not respond to their appeal to help.

Third, the doctor's act can probably be the reason behind the salvation of society, and also of the husbands who could join in marriage with this category of girls from some unjustifiable reactions and also from injustice done to such girls if doctors adopt a negative attitude.

On the other hand, the harms brought about by hymenorrhaphy in this category are limited, compared to benefits, as demonstrated in the following:

First:

The first kind of harms already referred to, and represented in deceiving the husbands is not involved in the doctor's act, because fraud means the concealment of a defect or imperfection in a thing, subject of contract, so that it appears before its seeker as flawless, thus inflicting harm upon him. If the reason behind rupture in a girl's hymen is not considered as perpetration of sin, nor a defect according to the norms of the law-maker or the people, then the doctor redresses this fault, he does not then deceive the husband, because the defect in a girl who suffers a rupture in her hymen due to an accident a moral defect, but what happened to her is a slight defect in her body. If the doctor corrects this defect and brings the hymen back to its former state, then his act vindicates the truth and sets the whole thing right.

Moreover, his act does not imply the concealment of a defect already existing in the girl, but it, in fact, prevents falling into illusions and suspicions. The doctor's abstention from performing surgery may lead to the establishment of accusation against the girl of a sin she had not committed, and subject the husband and people to fall into the misdeed of suspicion due to that accusation. This surgery in the same as treatment of an ordinary wound in the body. and even worthier of reward, as it saves the girl from many moral harms greater than those ensuing from the ordinary wound or the rupture of any other membrane in the human body.

Juristically speaking, Jurists almost unanimously agree that the absence of the condition of virginity is not regarded a defect necessitating annulment of a marriage contract, if the husband does not explicitly stipulate it (20).

Consequently, when the doctor performs hymenorrhaphy, he does not deprive the husband of the right to annul contract.

However, if the suitor stipulates the condition of virginity, but the girl has been discovered to be non-virgin, while the reason behind her non-virginity was not sinful, then the husband is not entitled to divorce her, as viewed by the majority of Jurists, because a virgin, to them, is the girl who not had sexual intercourse in marriage (21).

That girl who suffers elimination of hymen with no sexual intercourse

in marriage is treated as a virgin girl. Consequently, when the doctor performs hymenorrhaphy, he does not deprive husband of the right to annul the marriage contract, even if husband stipulates the condition of virginity at marriage.

It is true that some jurists view that husband is entitled to annul the marriage contract, if he had stipulate the condition of virginity, which is stricter in sense than of being maiden. Strictly speaking, this means that the hymen should exist. They further say: «the state of virginity is desired by people, and if the husband stipulates it, then it should be taken into consideration. Whereas its non-presence consequent establishes the choice is for the husband, whether to divorce her or not. This description is like any other one desired by people, and if it becomes stipulated in a condition, but not fulfilled, then choice is established. exactly in some way when he stipulates that his wife is white, then she turns out to be black, or that she is old or young, or without poor hearing or eye-sight, but she appears otherwise.

This view is held by some jurists, whereas some others hold the opinion that the husband's choice is not established, whatever conditions he stipulates, if it is discovered defects which necessitate choice, without the stipulation of any condition (22).

This specific case, in which some jurists give the husband the right to divorce , does not contradict what has been mentioned that the hymenorrhaphy performed to a girl suffering from a rupture in the hymen due to a cause other than perpetration of fornication does not deprive anyone of his rights. It does not imply any deceit, because the doctor's act involves no fraud against husband, as he (the doctor) does not deprive him of the right to put the description he stipulated, to the contrary, his act becomes a reason behind the materilization of that description, at the time when the act of performing hymenorrhaphy does not connive at a disgraceful conduct of sin perpetrated by the girl. We cite the following example that a deaf or blind girl comes to a doctor who perform a surgical operation to her bringing back her hearing or vision, and then a person proposes to her, and stipulates that she should have prefect hearing or eye-sight, but it becomes discovered that she had been at a time blind or deaf, then the husband is not, accordingly, entitled to annul the marriage contract.

Second:

It is indisputable that the doctor's act of performing hymenorrhaphy to

a girl suffering from a rupture in this category, due to the reasons already referred to, does not lead to any connotation of encouragement to commit fornication, as it is originally assumed that the girl has not perpetrated that sin, nor has she disobeyed Allah, glorified be Him, in what befell her against her will. The doctor's abstention from performing hymenorrhaphy does not indicate any meaning of rebuke for perpetration of the sin of fornication, because rebuke is only directed for the sinful. We know this from the fact that the Sharia lets the compelled, those driven by dire necessity and wrongdoers go in certain cases unpunished. The Sharia lifts liability and punishment from them primarily because of injustice, and secondly its futility. To the contrary, such detriment represented in the encouragement of perpetrating the sin of fornication may be brought about through the doctor's abstention from performing the operation, as formerly referred to, because the girl who suffers from the obliteration of the proof of her virginity, and all the doors are shut before its restoration, in a community which severely censures this, then she will become nearer to obeying satan and committing vile deeds, at a time when the methods that may well protect against the most significant presumption of that sin namely pregnancy, have been available, along with the consideration of the sexual desire instilled in the sons and daughters of Adam, which is properly observed by the law-maker when encouraging marriage. That girl fears getting married, as this will expose her, and she may find no other way to satisfy her natural desire, except through the impermissible relation, that could be undisclosed with some precautions.

Third:

The harm of exposing the private parts and looking at them is indisputably present in hymenorrhaphy, whatever the reason behind rupture is. Nonetheless, jurists permit exposing and looking at the private parts if a likely need or interest arises, or when exposure leads to the repulsion of a harm greater than that of exposure. Al-Ezz Ibn Abdulsalam says: (Exposure of and looking at private parts are two harms impermissible for both the one who looks and the one who is looked at, as this implies disclosure of hidden secrets. Yet, the two harms are permissible if they involve the benefit of circumcision, cure, giving of testimonies against defects, or looking at the private parts of perpetrators of fornication and/or adultery to apply the prescribed Qur'anic punishments ordained by Allah, if the one who looks, is eligible to giving a testimony of fornication, and completes the lawful number......)

Accordingly, so long as the interests, already referred to, are existent,

and rupture of the hymen arouses a strong suspicion that some detriments may be brought about inflicting harm upon the girl and the society, then exposure of private parts is, in this question, permissible in a way no less pressing than the cases mentioned and considered by jurists as justifiable reasons behind exposure of and looking at the private parts.

Result Of Striking A Balance Between Benefits and Harms in This Category:

Following this analysis of benefits and harms of performing hymenorrhaphy due to a rupture caused by a reason other than perpetration of sin, it is quite obvious that the weight of benefit achieved by the doctor's act gains greater preponderance and is therefore permissible, as it is a liked matter to cover the girl through having hymenorrhaphy. This act could be possibly obligatory for doctors, and the mere probability of a possible harm ensuing upon operation is no excuse.

It is insufficient in the coverage of this category of girls that the doctor adopts a negative attitude towards them by withholding their secrets and divulging no information, because such attitude merely delays the disgrace which will stick to them and the detrimental effects which will befall them.

It is also insufficient in coverage and warding off of detriments to issue a medical certificate stating the reason behind rupture with no hymenorrhaphy to be performed, due to the ineffectiveness of that procedure in reality, and its insufficiency to convince the future husband that his wife is not guilty, and also those who know of it, as the devil of suspicion in issues of moral dignity is far stronger to be repelled by that procedure.

Therefore, the doctor, must perform hymenorrhaphy is such cases to ward off the evil and detriments if frequently occurring in a society. He is hopefully rewarded for this and not sinning, God willing. His reward in this is not less than in treating ordinary patients.

Second Point: Second Category

Rupture in the hymen may be attributed to fornication committed by a girl of her own free will, while being legally major and sane. To what extent does the case apply as regards the afore-mentioned detriments and benefits if the doctor performs hymenorrhaphy?

Most probably, answering that question necessitates drawing a distinction between two cases:

The first case is the establishment of fornication committed by a girl being exposed among people as a prostitute notorious of whoredom, and against whom a court's ruling of fornication has been passed.

The second case is when the girl commits fornication for only one time, in secret, and without perpetration among people, or previous referral to court.

We tackle the two cases in the two following branches:

First Branch: Hymenorrhaphy In Case Of A Rupture Caused By Exposed Fornication:

In such cases, no benefits are gained if hymenorrhaphy is performed to that category of women, because, as aforementioned, seeking benefits and warding off detriments as an outcome of hymenorrhaphy heavily count, in the aggregate, on the nonexposure of the girl, but if she is already exposed, then surgery is futile, and setting things right would have no effect as regards the establishment of good reputation among people, as the motives of ill thoughts have been already present along with the spread of the vile deed. Hymenorrhaphy also has no effect on holding back the social reactions, due to the presence of another reason which stirs up such reactions, while the doctor cannot conceal that reason. Therefore, hymenorrhaphy performed to that category of women is void of any benefit and still involves detriment in that the least harm implied in the surgery is the exposure of the private parts for no good warrant. Upon such considerations, the detriments ensuing from performing hymenorrhaphy to that category of women gain preponderance, and the opinion that such surgery is impermissible is closer to the spirit of Sharia than that calling for its permissibility. Such view-point may gain support through the opinion of scholars that the sinner, who is worthy of being covered is the one who is not used to sinning nor is known for committing sins, whereas he who repeatedly perpetrates wrongdoings duly deserves exposure (24).

Such opinion may also receive support through the opinion of some scholars that (if sinner is publicly notorious for adultery or any other form of debauchery, then he manages to get married to a girl from a good family who is deceived by his appearance then the wife has the choice either to continue with him or to seek separation on basis of an imperfection in him). Such opinion is predicated on what the Messenger of Allah, may the blessings and peace of Allah be upon him, said:

"The fornicator who is flogged marries only the one like him" (25).

Only the one who is flogged is mentioned as being notorious for debauchery, and he is the one who should be separated, whereas the case does not apply to those who are not notorious for transgression (26).

Related to this category is the woman referred to court, even though no judgment condemning her with adultery or fornication has been passed against her, because the presence of intact hymen is reckoned as a doubt that drives away punishment against that woman, as viewed by the majority of Jurists, even if a testimony against her is given by four men of honourable record (27).

In such a case, hymenorrhaphy can be looked upon as an instrument ot establish the falsehood of the honest witnesses and cast doubt on their testimonies with no right, therefore it is impermissible.

Second Branch: Hymenorrhaphy In Case Of Rupture Caused By Fornication in Privacy:

In such cases, where the fornication of the girl is not disclosed among people, and no judicial verdict is passed against her, then most of the aforementioned ideas stated forth in the beginning of the research tackling the benefits ensuing from hymenorrhaphy are expected to be achieved, because non exposure of private parts - as exhorted by Islam, occurs when the sinner is not notorious, like that girl; in the sense that if hymenorrhaphy is duly performed, resulting benefits can be gained, thus establishing the supposition of warding off many detriments against the girl and society as well. It is also a supposition that encourages her to repent and refrain from recidivist tendencies. Moreover, it can also be a supposition that disseminates the good intention among the believers, safeguards against the spread of ill thoughts, holds back the social reactions referred to and finally administers Justice before the code of establishing the lawful proof; among the categories of women themselves on the one hand and of women and men on the other, etc. However, to what extent are the already mentioned detriments of hymenorrhaphy performed to that category present?

First:

At first sight, one may think that hymenorrhaphy in this case leads to the deception of the future husband of the girl, since the assurance that the wife is guiltless of fornication is a matter to the benefit of husband, while the obliteration of the sign that proves otherwise deprives him of this benefit and conceals from him the real nature of his wife.

Though it looks so, yet little consideration may prove otherwise in reality, and that the doctor's performing of hymenorrhaphy to a girl who committed fornication does not imply any deception, as far as the lawful aspect is concerned, for her future husband.

It is virtually undeniable that the obliteration of a sign which indicates a fault or imperfection in any thing is reckoned as an act of deceit to the one who seeks it, if such obliteration causes the concealment of the fault from the seeker, but the real nature of the doctor's act does not imply the obliteration of the sign proving her fornication, because what is meant by the obliterated proof, in this context, and whose concealment implies deceit is the lawful evidence but not merely the presumptions and conventional evidences, though disregarded and overlooked by the Sharia.

When the doctor brings back the hymen to its former state, he does not obliterate a proof reckoned by the law-maker as of great significance in establishing the crime of fornication, because the absence of the hymen does not necessarily establish the evidence of fornication as unanimously agreed by Jurists as already mentioned. If the doctor performs no surgery for the girl and she gets married with no hymen, the husband has no legal justification to accuse her of fornication, nor to divorce her. Moreover, the absence of the hymen should not be reckoned as a pretext of divorce between him and Allah, highly exalted be He, as divorce in this case is based upon an ill-thought and not on firm belief. Therefore, divorce should only be the outcome of a lawful presumption, not of mere conventional proofs unrecognized by the Sharia.

When the doctor performs hymenorrhaphy, he does not deceive the husband, because he does not conceal from him an evidence deemed by the Sharia as establishing the crime of fornication.

In such way, the harm of deceit represented in the doctor's performing of hymenorrhaphy is illusory and is no grounds for impermissibility.

Second:

On the other hand, the second detriment is represented in the probability of encouraging the spread of sin, when doctors perform hymenorrhaphy. This is also a detriment based on illusion. The reverse may be true. A girl given another chance, probably her last chance, of virginity will even be more keen on guarding it, espeically in this pattern of

society which even goes - unjustly - beyond the valid criteria of Sharia and takes suspicions and doubts as justification to tarnish and castigate these girls.

Had the customs and traditions been fully identical with the conditions required by the Sharia upon the discovery of a girl who suffers a rupture in the hymen, with no reactions against that discovery, then the probability of encouraging vile deeds would not have been present when doctor's perform hymenorrhaphy.

One may say, Allah, the Mighty, guided us in His Munificent Book to the necessity of preventing the marriage of chaste men and women to adulterers and those who associate partners with Him. Allah, Blessed" Exalted be He, says:

> *THE ADULTERER WEDDETH NOT BUT AN ADULTERESS OR AN ASSOCIATORESS, AND THE ADULTERESS! NONE WEDDETH HER SAVE AN ADULTERER OR AN ASSOCIATOR, AND THAT IS FORBIDDEN UNTO THE BELIEVERS (28).*

Ibn Qayyem Al-Jouziyah says: Allah, highly exalted be He, explicitly states prohibition in surat Al-Nur «Light», and has told the believers that the one who marries an adulteress, then he is either an adulterer or an «associator», so one may either adhere to the divine ordinance and believes in the obligation of His Judgement upon him first, if one does not adhere to or believe in this, then he is an associator, and if he believes in the obligation of the Judgement but opposes it, then he is an adulterer. After that, Allah, ordains impermissibility by saying:

> *AND THAT IS FORBIDDEN UNTO THE BELIEVERS.*

It is obviously clear that the call for abrogation concerning this verse by the other one when Allah, exalted be He, says:

> *AND WED THE SINGLE AMONG YOU....*

is the weakest. Allah, highly exalted be He, permitted marrying free women and female slaves on condition of chastity. He says:

> *YE MAY WED THEM, THEN WITH THE LEAVE OF THEIR OWNERS, AND GIVE THEM THEIR DOWERS REPUTABLY AS PROPERLY WED, NOT AS FORNICATERESSES, NOR AS THOSE TAKING TO THEMSELVES SECRET PARAMOURS.*

He made permissible that sort of marriage in this case in particular. He says, highly exalted be He,

> *VILE WOMEN FOR VILE MEN, AND VILE MEN FOR VILE WOMEN*

The rule stipulates that any Muslim who marries one of such women, then he is as vile as them. It is also one of the most abhorrent vices that a man marries a whore. Such vice is latent inside the instinct of mankind, and to all people it is the utmost digrace. A whore cannot be trusted not to disgrace her husband's bed and bear children not from him, and, any how, the prohibition is established without this.... (29)

The doctor's performing of hymenrrohaphy to an adulteress may conduce to the perpetration of a wrongdoing that contradicts this divine teaching explained by Ibn Al-Qayyem as already mentioned. This wrongdoing is represented in a chaste man marrying an adulteress, and living with her, as he finds her virgin. If the doctor refrains from performing surgery, then he is closer to adhering to the Qur'anic teachings as there exists the possibility of separation if husband discovers non-virginity; and by such separation, the Qur'anic text becomes enforced.

Answering this question comprises many aspects:

The first one is represented in the fact that most jurists are not of the opinion to apply this text on an adulteress who actually committed the act but her adultery is not proven by a lawfully-recognized evidence such as, testimony, confession or pregnancy. It is not permissible to describe that woman as being «adulteress», and the one who does so is a slanderer and deserves striping and rejecting his testimony. If three men give their testimonies against a woman accusing her of adultery and they are reputed as the most just among people but no fourth witness comes up, then it is imperative for people, including the witnesses to treat her in life as a chaste woman, whereas Judging her case is left to Allah. Rupture of the hymen does not equal one-tenth of the testimony of the just witnesses as a proof of adultery.

The second aspect is the fact that scholars greatly disagree upon the explanation of the said verse. Most of them do not Judge her case with the external signs as Ibn Al-Qayyem and some other scholars did. Al-Shawkani, and Al-Qurtubi quoted five opinions viewed by scholars as follows:

The First:

The text is abrogated. Malik related on the authority of Yehia Ibn Said on the authority of Said Ibn Al-Mosayeb, he said:

THE ADULTERER WEDDETH NOT BUT AN ADULTERESS OR AN

ASSOCIATORESS: AND THE ADULTERESS! NONE WEDDETH HER SAVE AN ADULTERER OR AN ASSOCIATOR.

This verse is abrogated by the next verse:

AND WED THE SINGLE AMONG YOU

as the adulteress is included among the «single» Muslims. Abu Jafar Al-Nahhas says: such opinion is approved by most scholars. Those who give the religious opinion view that the one who commits adultery with a woman can marry her and any other one can also marry her. These are the very words of Ibn Omar, Salim, Jaber Ibn Zaid, Attaa, Taoos, Malik Ibn Anas, Abu-Hanifa and his fellows. Al-Shafi says: the decisive opinion in this case is that one held by Said Ibn Al-Mosayeh.

The Second:

Wedlock here in this context is the sexual intercourse. The meaning is that the adulterer receives encouragement and response only from an adulteress or an associatoress who does not consider adultery forbidden.

The Third:

The flogged fornicator commits fornication only with a flogged fornicatoress or associatoress. The same case applies to the fornicatoress.

The Fourth:

If this is in the whores: a man marries one of them to provide for him through prostitution. People who hold this opinion derive support from the verse revealed concerning Marthid Ibn Abi Marthid who was in charge of the captives in Makkah. Among the captives was a whore called «Inak» who was his mistress. He asked the Prophet's permission to marry her. Then, the verse was revealed. Al-Khattabi says, it specially tackles this specific case of that woman as she was an infidel, whereas in the case of the Muslim fornicatoress, the marriage contract is not to be annulled. It is said it was particularly revealed concerning a Muslim who asked the prophet, to marry a woman called «Om Mahzoul», who was a famous whore. He put the condition that she had to support him. Allah highly exalted be He, revealed this verse. It was said that the verse was revealed concerning the people of the «Suffa», i.e. a side of the Mosque away from the prayer-area, those people who migrated from Makkah to Medina with no houses or kinsmen.

They dwelled in the «suffa» of the Mosque. They were four hundred men seeking their living by day and resorting to the «suffa» of the Mosque at night. There were some notorious whores in Medina. They were known to have abundant clothing and foods. The people of the «suffa' were about to marry those women to resort to their homes, eat their foods and wear their clothes. This verse was revealed to safeguard them against that sort of marriage.

The Fifth:

The verse is valid unambiguous, and admitting of one interpretation and not abrogated. People who hold this view say: the one who commits adultery then the intercourse between him and his wife is invalid, and if the wife commits adultery then the sexual inter-course, with her husband is invalid. Some of this group argue, on the other hand, that the sexual intercourse should not be invalid, whereas the husband is ordered to divorce his wife if she commits adultery, and if he keeps her then he is a wrongdoer.

It is impermissible to marry an adulteress or an adulterer unless they repent, and only when they turn penitent that marriage is permitted (30).

It is clear from such quotations that most jurists are not of the opinion that marrying an adulteress is impermissible and did not stipulate any more criteria than those for marrying other women. Hanbalite scholars view that it is permissible for a man to marry a adulteress while knowing of her adultery if the two following conditions are fulfilled:

First Condition:

The lapse of the legally prescribed period of waiting during which a woman may not remarry to make known that her womb is void of a pregnancy.

Second Condition:

Her being penitent, and showing remorse and refraining from perpetrating the wrongdoing (31).

Third Aspect:

When the law-maker urges for coverage, we feel that benefits are given preponderance over detriments, while presuming their probabilities, because the one who does not expose an adulterer or an adulteress, whether a virgin or non-virgin, prevents the application of that lawful legal

consequence derived by some scholars from the former verse, in the sense that when someone does not expose an adulterer or adulteress, he prevents others from knowing them, thus subjecting some chaste people to marry them. Along with such probability, the law-maker called for non-exposure of sinners, particularly in questions of honour. The interpretation of this matter is confined to either of the following two specific points:

First:

The law-maker has given preponderance for the benefit of non-exposure over that in which adulteresses are linked through wedlock with chaste men as already referred to.

Second:

The law-maker does not render it impermissible to have a link of wedlock with adulterers. The verse denoting such prohibition may be abrogated or interpreted, as the majority of Jurists formerly elucidated.

One may say, the doctor's performing of hymenorrhaphy is an act that exceeds mere non-exposure, because non-exposure is already established through the doctor's refraining from disclosing and reporting the secret of the girl who suffers a ruptured hymen due to fornication, and so there is no necessity to perform hymenorrhaphy.

Answering that question we say that coverage that is exhorted by the law-maker is given as a general adopted by man, and for the positive attitude which may be more effective, and coverage through the positive attitude of the doctor towards the girl is what will bring about the benefits already specified in the first part of this research.

The doctor's coverage through the negative attitude does not achieve any of such benefits, as it is a temporary non-exposure which comes to an end when the girl gets married and the husband discovers her nonvirginity.

Nonetheless, the positive attitude of the doctor, represented in performing hymenorrhaphy to a fornicatoress, is no more, in terms of the effects sooner or later, than the negative attitude adopted by the witness of adultery who refrains from reporting an adulterer or adulteress whether married, divorcee, or widow, because the latter's non-exposure implies undisclosing a sin the perpetration of which does not leave any sign in the perpetrators, thus rendering non-exposure of deeper effect than that of a virgin girl who commits fornication because the sin has left in that girl a sign not to be obliterated by mere non-exposure through the negative

attitude. Its obliteration necessitates a positive action to eradicate the effect resulting from fornication.

Fourth Aspect:

Imam Malik related on the authority of Abu Al-Zubair Al-Makki that a man engaged his sister to another man and told him that she had committed fornication. When Omar Ibn Al-Khattab, may Allah be pleased with him, heard this, he hit the man or almost did so while saying to him: «why mentioning this» (32).

On the authority of Tarek Ibn Shihab, a man engaged his daughter to another man and the girl had committed fornication. The man came to Omar mentioning this to him. Omar said: what have you seen of her? He replied: I have seen nothing but good, then Omar: said let the girl get married and do not make this known (33). In another account, a girl had indulged herself in debauchery and the prescribed Qur'anic punishment was applied to her, then she repented and became truly penitent and led a respectable life. Whenever someone came to her uncle to engage her, he disliked to let her get married unless after telling of what happened of her, and then he hated so doing. He explained the matter to Omar who told him: let her get married in the same way as you do with your good girls (34).

On the authority of Al-Shaabi, he said: a, man came to Omar Ibn Al-Khattab telling him: O commander of the Faithful I buried alive a daughter before I became a Muslim, but I managed to save her before she died, and brought her out of the earth. She embraced Islam with us and her faith was good, but she committed a sin punishable by Qur'anic provision, and unawares we found her drawing a knife trying to slay herself but I managed to save her life. She wounded herself. I cared for her until the wound healed, then she became better and was asked for marriage should I tell of what she prepetrated? Then Omar said: If you do so I'll inflict a punishment upon you to be the talk of the people of all countries, let her get married in the same manner as the chaste believing woman (35).

Such accounts about Omar, may Allah be pleased with him, denote the permissibility of marrying a fornicatoress even if the husband is chaste. Yet, fornication committed by a woman is not reckoned a disgrace which the guardian should make known, if the woman becomes penitent. If Omar had viewed fornication a defect giving the husband the right to divorce her, he would not have adopted that attitude with the guardians, and would

encourage them to tell of what they knew, as concealment deprives husbands of the right to divorce (36).

Al Bagi says in explanation of the last account related by Malik in Al-Mowat'a that (man's disclosure of fornication is a sin punishable by a prescribed provision?)

A similar account was related in Medina on the authority of Eissa Ibn Dinar, and Omar Ibn Al-Khattab, may Allah be pleased with him, rebuked the man: «perhaps she might have repented and turned penitent, and the one who does so should not be ill-mentioned, as Allah, highly exalted be He, accepts the repentance of man, pardons his wrongdoings, and the guardian is not forced to make known anything about the one for whom he acts except for the demerits for which divorce is allowed, insanity, leprosy, leukoderma and vulvopathy.

Third:

The detriment of disclosing and looking at the private parts is included in the doctor's performing of hymenorrhaphy for this category also. What can be said in this category is the same as in the first category, that the need to ward off the greater detriment justifies the minor one.

Third Point: Third Category

This category is represented in the rupture of the hymen due to sexual intercourse through legitimate marriage, whether woman is a divorcee or a widow.

Any woman who suffers rupture of the hymen due to that reason has no benefit to seek hymenorrhaphy, because rupture of the hymen to this category of women does not entail any detriments, neither in the conventions nor in the Sharia. Hymenorrhaphy is meant to ward off probable detriments ensuing from rupture, as already referred to.

If hymenorrhaphy for this category of women is void of any benefit, it is not void of some forbidden harms, as it, at least, implies the disclosure of private parts of the woman with no lawful justification that rises from a necessity or a need. Most probably, it is impermissible and unlawful.

Summary Of The Legal Consequences Of Hymenorrhaphy Considering Reasons Behind Rupture

As already illustrated from former discussions between the benefits and detriments entailed by hymenorrhaphy, it is quite obvious that:

1. If the reason behind rupture is an accident or an act, not looked upon by the Sharia as a sin, and not due to a sexual intercourse in a marriage contract, then we consider:

In case the girl will suffer troubles and injustice due to the prevalent conventions and traditions, Hymenorrhaphy becomes requisite as it wards off some highly probable detriments is treated as certainty. If a harm is strongly believed to take place, even in the future, then it is looked upon as an existing one (38).

In case occurrence of harm is not likely, then hymenorrhaphy becomes optional, but not requisite, as it wards off some probable detriments. What determines such thing is the nature, customs and traditions of the society in which the girl lives.

2. If the reason behind rupture is sexual intercourse in a marriage contract, then hymenorrhaphy becomes forbidden, and consequently, it is impermissible for a doctor to perform hymenorrhaphy for a divorcee or a widow, because such act entails no benefit. With all the more reason, performing this surgery is forbidden to a wife, because it is playfulness and irresponsibility. Moreover, the doctor should not look at the private parts of a woman with no good reason necessitating so.

3. If the reason behind rupture is an act of fornication known to people, whether due to the issuance a court verdict condemning the girl of fornication or owing to the repeatedness of such act by the girl, making it public and becoming known for prostitution. In such a case, it is, forbidden for the doctor to perform hymenorrhaphy, due to the absence of benefit and the presence of detriments.

4. If the reason behind rupture is fornication not known to people the way it is in the former case, then the doctor has the option to perform hymenorrhaphy, or not. Performing the surgery gains more weight if the doctor can do it because his act will denote the non-exposure of the girl, as previously mentioned, and the non-exposure of the sinners is supported by many legal provisions:

Performing hymenorrhaphy may be impermissible, if it entails the waste of one of the rights of man; but such act does not imply so as some may think on the basis of what has been elaborated in detail.

Such act may be requisite if disclosure entails the occurrence of a detriment or a sin, as the case when a single person sees an act of fornication, if he reports it while the accused one does not confess then it is considered slander and when the doctor does not perform hymenorrhaphy in this case he is not included in the act of slander.

Non-exposure may be preferred if it is known that the sinner has turned penitent and refrained from recidivism (39).

In case it is unknown whether the sinner has turned penitent or not, non-exposure in the light of what has been mentioned becomes permissible, unless we believe that people will adopt the right path in the society of Islam, where non-persistence in acts of transgression is rather the rule, then, in this case, non-exposure is preferable.

STUDY III
Attitude of the Doctor towards the cases he examines

What has been mentioned of benefits and detriments which can result from hymenorrhappy, and also of their variance according to the reason behind rupture is, in point of fact, an analysis of fact, an analysis of what could actually be in reality. If the doctor could know the reason behind rupture, he has to adhere to the conclusions of this analysis in terms of basing legal consequences on the preponderance of benefit. Nevertheless, the doctor, more often cannot know the reason behind rupture, neither definitely nor most likely, particularly if rupture is old and the wound is healed (40). Then what should he do? Before answering this question, we should know the answer to another question: should the doctor, from the Sharia point of view, seek after the reason behind rupture, ask for evidences and investigate the matter?

It is Unequivocal that the doctor is not a Judge who resolves a dispute between opposing parties. He does not have the means nor invested with authority of a Judge so as to ask for the witnesses, their attestations and investigate circumstances and presumption. Accordingly, the doctor is not assigned to practise any authority, while he is not supplied with its instru-

ments in the sense that responsibility is proportionate with the size of delegated power. But since the work he is required to achieve when a girl suffering a rupture in the hymen goes to him wishing to have hymenorrhaphy then the relevant legal consequence varies according to the various reasons behind rupture. The doctor has to fully consider what ever information he obtains or supposition whether unasked or with a convenient request which does not impede his job, as the case when a girl comes confessing fornication, or admits it when he asks her, or when he personally sees the act of fornication, or when he has already known through one of the channels reckoned as lawful in the Sharia that girl is guilty of fornication, or that her case is brought before court, or that she is known among people as a prostitute. He also, asks her whether she is a divorcee, a widow or a wife. In all cases he should believe her because the basic rule is that she is guiltless of the crime with which she is condemned. If he knows her case through any of such means, then he has to adhere to the legal consequences already mentioned.

But in case he is not able to know of the reason behind rupture, and he is not acquainted with it through the available means, then it is not imperative for him to seek after the reason through other means even if he suspects that the reason behind rupture is due to an act of fornication. He should not investigate the matter, but he has to be content with the external facts, since suspicion based upon no lawful evidence represents the ill-thought prohibited by Allah who commanded us to avoid it as He.

O YE WHO BELIEVE! AVOID MANY A SUSPICION, VERILY SOME SUSPICION IS A SIN, AND ESPY NOT,... (41).

Commenting on this Qura'nic verse, Ibn Katheer says: (suspicion is unwarranted ill-thought and distrust of relatives and people, since much of it is a sin) (42).

In addition, Al-Mawardi says (the ill-thinking towards a Muslim is an illusion that does not count on facts) (43).

He further comments on "And espy not" by saying that the verse denotes (looking for the hidden until it is disclosed) (44). Al-Qurtubi says the verse indicated that: Muslims are ordained to act on what is manifest, but not to pursue the "private parts", that is weaknesses of Muslim. This means a Muslim should not search for an imperfection in his fellow muslim endeavoring to know it after Allah has covered him. In the Book of Abu Dawud on the authority of Moawia, he says:

I heard the Messenger of Allah, may the blessings and peace

of Allah be upon him, saying: "If you detect people's weaknesses, you vitiate or almost vitiate them" (45).

The Messenger of Allah, may the blessings and peace of Allah be upon him, also said:

"There are three things found in my nation: evil omen, envy and evil thinking. A man said, O Messenger of Allah, what washes them away from one? the Messenger, may the blessings and peace of Allah be upon him, said: If you envy (someone) ask Allah for forgiveness, and if you suspect do not verify, and if you think there is an evil omen go ahead" (46).

Consider the words of the Messenger,

"and if you suspect do not verify"

it indicates that it is incumbent on a believer to refrain from giving free rein to suspicion and exert no efforts in investigating and verifying so as to expose the one who is subject of suspicion (47).

Accordingly, when a girl comes to a doctor asking him to perform hymenorrhaphy due to a ruptured hymen, he should consider her case from a righteous perspective and presume that what she suffered from was not due to an act of disobedience against Allah the Mighty and Majestic.

He should not also further probe into her case in a way exceeding the limit of the manifest signs as already mentioned. Moreover, he may not establish his attitude on suspicion towards her. Omar Ibn Al-Khattab, may Allah be pleased with him, says: Do not presume a word coming out from your believing brother but as a good one, and find a support for goodness in that word (48).

Rupture of the hymen is attributed to numerous reasons, only one of which is disobedience against Allah. Whereas the other reasons do not denote disobedience.

The aspect of good intention in this question is broader than that of suspicion, and the supports of goodness are much more greater than those of evil. The prohibition is against mere suspicion in surat Al-Hujurat, even if the one who casts doubts on another does not build judgements thereupon. How about the suspicion upon which Judgements and actions are taken. It is undeniable that the second case is more worthy of impermissibility.

One may say: Allah highly exalted be He, does not denounce all suspicion, but such denunciation is partial, and in the same way there are many of the practical judgements which are based in the Sharia on preponderance of suspicion. Only a group of "innovators" have denied acting upon suspicion. They have also denied worshipping Allah on the grounds of suspicion and the admissibility of acting thereupon (49), and since the girl suffers a thing that arouses suspicion that she has perpetrated a sin., represented in the rupture of hymen, then that suspicion is not included in the prohibition mentioned in the munificent verse.

It is equivocally true that the words said by that man are true at face value but incorrect upon scrutiny that is, there are two kinds of suspicion: one based upon an aspect of Sharia evidence and this sort is not included in the prohibition mentioned in the munificent verse, it does not stir rebuke against the one who raises it, nor subjects him to blame, whereas the other kind does not rest upon an evidence recognized by the Sharia, and this kind is meant by the prohibition.

Al-Qurtobi says in explanation of this meaning after mentioning the verse and the Hadith of the Messenger of Allah, may the blessings and peace of Allah be upon him,

"Beware of suspicion..."

(our scholars view that suspicion in this context and in this verse takes the form of accusation, the subject of warning and prohibition, is the UNWARRANTABLE accusation, as the case when someone is accused of debauchery or drinking wine for instance, but no evidence proving accusation is established. The proof that suspicion in this case means accusation is the Qur'anic verse

AND ESPY NOT...,

because one my think first of the accusation and then wishes to investigate into, search for, probe into and inquire about it to verify the accusation. The prophet prohibited this, and if you wish you may say: what draws a distinction between suspicions which should be avoided from the others is that each thing for which you do not know a TRUE PROOF and MANIFEST REASON, then it is impermissible and its avoidance is imperative, if the one, subject of suspicion is known for avoiding exposure and seeking righteousness, and is believed by others to be manifestly honest. Therefore, arousing suspicions and distrust about him is impermissible, this is contrary to that case when a man is notoriously known for casting doubts about others and wickedness in public... Suspicion has two patterns:

The first one is known and backed up by any ASPECT of LAWFUL EVIDENCE, and consequently a judgement can here be passed, and most of Sharia provisions, in fact, rest upon preponderance of suspicion.

And the second, when doubt is aroused with no lawful evidence. THIS HAS NO GREATER REASON THAN THE OPPOSITE, and this is the suspicion, and no judgement should accordingly be given upon it (50).

He also says "as explanation of what Allah, said:

> *WHEREFORE, WHEN YE HEARD IT, DID NOT THE BELIEVING MEN AND THE BELIEVING WOMEN IMAGINE THE BEST OF ONE ANOTHER (51).*

I argue that for this text scholars view that: the verse is a basis that the degree of faith attained by man and the standing of righteousness with which a believer is attired, and the costume of chastity within which a Muslim is wrapped should not be doffed off him through doubtful news even if such news prevail when deriving origin form invalid or unknown source (52).

Al-Ezz Ibn Abdulsalam also clarifies that the prohibited suspicion in the munificent verse and prophetic Hadith lies in the fact that we build Judgements on a suspicion on which we should not establish any Judgements, as the case when a man is thought to have perpetrated adultery, stolen, engaged in highway robbery, killed another, obtained money illicitly or defamed the honour of others, we should not punish him without a lawful Sharia Evidence supporting the suspicion..... (53).

These are the opinions of the scholars in explanation of the munificent verse, bearing in mind that what Al-Qurtubi mentioned as the reason leading to suspicion and the true sign mean what Al-Ezz Ibn Abdulsalam declared as the lawful Sharia Evidence.

Let such explanation together with the given verse be the criterion for our case: a girl comes to the doctor telling him that her hymen is ruptured and that she wants to bring it back to its former state. while no verdict of fornfication has been passed against her, she makes no confession of a sin to him, he has not seen her in an act of fornication, she is not a notorious whore, what is, then, the lawful Sharia evidence on which he can establish his suspicion? He does not have but the mere fact that she suffers a ruptured hymen, is this a lawful evidence and a true sign of fornication?

None of the Muslim Jurists has said that, and the methods for estab-

lishing the positive proof of adultery and/or fornication are known in the Qur'an, the Sunna and by the Jurists. Such methods do not include rupture of the hymen as previously elucidated.

If the case is so, then the suspicion established by the doctor resting upon an invalid sign is included within the prohibited suspicion, then the doctor should avoid it, and in case he does not manage to get rid of it psychologically (54), then the least thing for him to do is to establish no concrete steps thereon, and treat her on the basis of good intention, consider her case from a righteous perspective, and fulfil her request so long as he can perform the surgery.

Al-Zahri narrates that a man married a woman but he did not find her virgin. Menses had ruptured her hymen. Aisha, may Allah be pleased with her, sent to the man informing him that the monthly period positively ruptures the hymen. On the authority of Al-Hassan, Al-Shaabi and Ibrahim, it is said that if a man does not find his wife virgin, then this not mean anything since virginity can be eliminated by a leap, much menstrual bleeding, long spinsterhood and heavy weight (55).

On the other hand, the basic rule is acquittal from sin. Anyone who abides by this fundamental rule, then his argument must be a strong one which cannot be refuted unless by a counter lawful argument. Mere suspicion, doubt or a sign unrecognized by the Sharia cannot compromise this rule. In these cases what is said is sound in the absence of such lawful argument. Al-Ezz Ibn Abdulsalam in elucidation of that fundamental rule says that (the origin is the acquittal of a muslim from rights, and his body from equity in punishments, prescribed provisions and discretionary punishments, as well as kinship to a specific person, from all utterances and the entire deeds).

If this is the origin, then the fundamental rule is that the girl is acquitted from fornication. Such rule is not weekened by the discovery of rupture in the hymen, because such discovery is not a lawful sign as already mentioned. Her case should be considered from the perspective of that basic rule, and she should be treated accordingly. Her words should be taken as true, so long as no Sharia-recognized evidence is established against that original assumption.

Accordingly, the legal ruling for hymenorrhaphy when the doctor does not know the reason behind rupture is exactly like that when he knows that the reason is an accident which represents no sin, such as a fall or something of the sort.

Conclusion

The conclusion of this research is meant to elucidate the nature of the concluded legal consequences, their relation with convention also provides answer for two questions that may be raised as regards them or the research through the following two points:-

First point : Nature and Changeability of Such Legal Rulings

Most of the benefits to be sought from hymenorrhaphy as already referred to in the beginning of the research, and also the detriments which may ensure from the doctor's abstention from performing hymenorrhaphy are, in terms of probability, based upon some social norms and conventions, which emerged in many of the Islamic societies, and which heavily count on the presence of the hymen at the night when marriage is consummated giving to its rupture greater significance than that accorded by the Sharia, and a larger dimension than the lawful one. Such norms and conventions look upon the rupture as proof of fornication.

If such societies abide by the lawful limit in this question, attaching no such big importance to the rupture of the hymen, and accepting no proof evidencing perpetration of fornication unless as stipulated by the Sharia, and if they act in conformity with the lawful principles and rules in confronting such a question, thus considering her case from a righteous perspective, and presuming that she is virtuous... I mean if such norms and conventions change into what is mentioned, then hymenorrhaphy would not have been based upon a suspicion of benefits as already illustrated, and the abstention from it would not have aroused the assumption that some detriment may be entailed. In other words, there would be no meaning of non-exposure and warding off of harms, and the principles of Justice between man and woman would not be achieved for the points in which the Sharia does not discriminate between them. Moreover, the didactic meanings previously explained at the outset of the research would not have been there.

Such act only comes to fulfil the wish of some suitors who stipulate that the girl proposed should be virgin. Most probably, this wish will greatly decline if such norms have changed to those in the manner we have elaborated.

They do not exceed, in importance, the wish that engaged girl should be that tall, that white, black, young or old in age. Nevertheless a group of

jurists have not heavily counted on such conditions, even if they are explicitly stipulated. Those Jurists are not of the opinion that a women is to be divorced if she fails to fulfil such conditions.

If such thing occurs, then the course of discussion will change, in the sense that it will mainly tackle the fulfilment scope of the necessity or the need represented in the probability that such condition is not stipulated by some suitors, which permits the exposure of the private parts of the woman to the doctor.

In this regard, it shall have been viewed that such probable benefit is insufficient to permit exposure of private parts of the woman before the doctor, specially if we adopt the opinion that disregards that condition and does not count on it unless when such stipulation becomes a prevalent social phenomenon as it marks the inception of returning to the conventions which compelled us to adopt such rulings, which mainly rest upon the consideration of the rupture of hymen as a sign of a girl's deviation.

Second Point : Two Suspicions and Answers

Suspicion I

One may say that the call for the non-reliance on rupture of hymen, and for change of the norms built thereupon is a call to simulate the western societies which have become indifferent to the matter which have led to sexual chaos and the dissemination of the vile deed of fornication.

In Answer to this Suspicion:

What I called for is the sound situation that goes in conformity with the spirit, intentions and rules of the Sharia in this regard. Among the rules of the Sharia is that no man is accused without lawfully recognized evidences, and the basic rule is the acquittal from accusations, and such origin is not to be changed unless by lawfully- stipulated proofs. Moreover, a gril is not proven to have committed fornication unless through witnesses, confession or pregnancy, and rupture of the hymen does not diametrically, establish the lawful evidence, and that accusing her of fornication in the absence of such proofs represents the prohibited suspicion. The Islamic society is asked not to adopt any attitude in consequence of this. The dissemination of such suspicion which rests upon this invalid presumption represents an invalid social convention to which reformers should not give in.

This is the attitude of the Sharia in this issue. If, as a consequence,

the look towards that girl with a ruptured hymen resembles that of the non-believing societies, then it is not a warrant for relinquishing this attitude approved by the wise law-maker for the believing community, or adopting opposing or confiscating customs and traditions. It is well-known that one conclusion may be the result of more than one reason, and the motive behind that look in such communities is different from that in the Islamic community with no link between the motives. In the western societies, the reason is not being a proof of fornication, but because fornication, presuming it to be the cause of rupture, is accepted to them and may be even favoured.

As regards the sexual chaos and the spread of fornication in western societies, the motive behind that is not that look towards rupture of the hymen, but it is attributed to doctrines, philosophies, morals, ideas and provisions contradicting those of Islam.

Protection against that malady and prevention against its being imported are constituted in adherence to Islamic doctrines, guidance and legislations, but not in the innovation of new customs and traditions.

Suspicion II

As regards the legal ruling on hymenorrhaphy which we have arrived at, one may say that medicine has not yet discovered any healthy benefit of the hymen, to be looked upon as a divine wisdom in creating it inside the female body; and so no wisdom remains but to say Allah created the hymen so that we may be ascertained of the chastity of the girl, and that its absence or rupture is indicative of unchastity. But if you say so. you deny part of that wisdom.

Answer:

As I am inclined to believe, Allah, the Mighty and Majestic created the hymen in the girl to stand a witness for but not against her. In other words, Allah, highly exalted be he, created it so that its existence may be evidence for her innocence of the deadly sin in disbelief of whoever accuses her, even if they were four fair witnesses, or more. Its rupture or non-presence is not however, indicative of perpetrating the vile deed.

This fact does not rest upon intuition, nor guessing, but on Juristic bases: We find our jurists, in unanimity, appove, as already elaborated, that rupture of the hymen is not reckoned as an evidence of fornication. Furthermore, we have found that the majority of Jurists view that the

Qur'anic prescribed provision is inapplicable to the girl whose hymen is sound, even if four or more witnesses give testimonies against her; moreover, they consider this presumption to be more significant that the Sharia evidence (56).

On the other hand, non-discovery of a health benefit to be derived from the hymen, does not imply non-existence of that benefit in reality. A day may come when some specialists find an organic or psychological benefit for the hymen (57).

Nonetheless, our failure to grasp the divine wisdom behind the creation of hymen does not Justify changing the Sharia ruling, and considering rupture a presumption of the vile deed.

Annotations

(1) "Lissan Al Arab". "Al-Misbah Al Moneer" and the Hadith is in Sahih Muslim".

(2) Related by Muslim, Mokhtassar Sahih Muslim, No. 1777.

(3) Related by Al Tabrani in al-Awssat Wal Sagheer - Al Targheeb wal Tarheeb, vol. IV p.284.

(4) Related by Abu-Dawud, Al-Nisa'i, Ibn Habban and Al Hakem. He says: sound ascription - Al Targheeb wal Tarheeb, vol. IV p.8285.

(5) Related by Abu-Dawud and others - Ibid, vol. IV,p.285.

(6) Surat "Al-Hujurat", verse 12.

(7) Surat "Al-Nur", verse 12.

(8) Related by Al-Bukhari, Muslim, Malik and Abu-Dawud
– Mokhtassar Tafseer Ibn Katheer, vol. III p.364
– Mokhtassar Sahih Muslim No. 1803 – Maalim Al-Sunnan, vol. IV p.8123.

(9) Mokhtassar Tafseer Ibn Katheer, vol. III p.364›

(10) Criminal Legislation in Islam, vol. II, p.441.

(11) Ibid, Tabserat Al-Hokkam, vol. II, p.259.

(12) See, methods for establishing proof of adultery and/ or fornication in Badaa'i Al-Sanaai, vol. 7, p.46 and the following, Al Ikhtiar, vol. IV, p. 80 and the following, Tabserat Al Hokkam, vol. II, p.259, Al Mughni, vol. I, p.165, Criminal Legislation in Islam – Abdulqader Ouda, vol. II, p.395.

(13) Ihya Ulum Al Deen, vol. II p.308.

(14) The Verse.

(15) Al Jamee li Alhkam Al Quran – Al-Qurtubi, vol. XII p.169.

(16) Fiqh Encyclopoedia, vol. VIII p.180.

(17) Ibid Al Deen Al-Khalis by Al Sobki, vol. II p.102 and the following.

(18) Mujama Al-Zawaeed, vol. VI p.251 – Maelim Al-Sunnan, vol. III p.310.

(19) Mujama Al-Zawaeed, vol. VI, p.250,

Ibn Maja, vol. I p.659, Al-Halabi Edition.

(20) Bada'i Al-Sana'i, vol. II. p.327 – Hashiat Ibn Abdeen, vol. II p.346 – Al Khorshi ala Mokhtassar Khaleed, vol. III p.239 – Al-Mughni, vol-.VIII p. 422, Fiqh Encyclopaedia, vol. VIII p.180.

(21) Ibid.

(22) Ibid.

(23) Kawa'ed Al-Ahkam, vol. I p.115.

(24) Kawa'ed Al-Ahkam, vol. I p.189.

(25) This Hadith is related by Ahmad, Abu-Dawud and Al-Hakem. In explanation, Al-Shukani says (the flogged fornicator: this description is given on what is commonly manifest concerning the one who is known to have committed fornication. In this there is evidence that a woman is not permitted to marry a man who was known to have committed fornication. The case also applies for man as he is not allowed to marry a woman who was a fornicatoress. Op Cit Nail Al Awtar, vol. VI p. 283 – Al-Fath Al-Rabani, vol. XVI p.p.196, 197.

(26) Jame'i Ahkam Al-Qur'an, vol. II. p.171.

(27) Al-Mughni, vol. 10. P.189.

(28) Surat "Al-Nur", verse 3.

(29) Zad Al Maad, vol. IV p.12.

(30) Op. Cit such sayings and others in Jame' Ahkam al Qur'an, vol. II, P.p. 167-171 – Nail al Awtar, vol. VI p. 285.

(31) Al Mughni, vol. VII p.p.515, 516.

(32) Al Muntaqa, vol. III p.352 – Al Muhalla by Ibn Hazm, vol. X p.28.

(33) Mosanaf Abdulrazzaq, vol. VI p.246.

(34) Sunnan al-Baihaqi, vol. VII, p.155.

(35) Mosanaf Abdulrazzaq, vol. VI p.p. 246-247.

(36) Also such news denote that Muslims in the eras of righteousness did not know such norms and customs that emerged later on in some societies, as regards the significance of the hymen and the act of spilling blood the night when marriage is consummated. If such customs had been present in the era of Omar, and if he had known about

the reactions on the part of the husband, his family and kinsmen as it happens nowadays in some countries, Omar would not have adopted the same attitude, and asked the parents, uncles and brothers to refrain from telling about the fornication perpetrated by their daughters and sisters. It is unequivocal that he knew that fornication is, strong presumption for elimination of hymen, and that marriage is also a strong presumption for discovering this. Yet, he used to ask them not to expose any woman, nor to make known the elimination of hymen as he knew that the criteria of the public go by those of the Sharia and that Sharia does not consider elimination of hymen an evidence or presumption of fornication, nor a cause necessitating annulment of marriage contract.

(37) Al Muntaqa, vol. III, p.352.

(38) Kawa'ed Al Ahkam, vol. I p.107.

(39) Kawa'ed Al Ahkam, vol. I p.p. 115, 189.

(40) Some of the dear borthers of specialist doctors who are reliable authorities on both science and religion have stated so.

(41) Surat "Al-Hujurat", verse 12.

(42) Mokhtassar Tafseer Ibn Katheer, vol. III, p.364.

(43) Al-Kotob wal Oyoun, vol. IV p.75.

(44) Ibid.

(45) Jame' Ahkam al Qur'an, vol. XVI, p.333.

(46) Related by Al Tabrani – Mokhtassar Tafseer Ibn Katheer. vol. III p.364, Op.Cit. Tafseer Al Kortobi, vol. VI, p.332.

(47) The one who is excepted is the judge, as he should investigate the matter, since it is necessary to distinguish the right from the wrong, settle disputes and grant rights to owners.

(48) Mokhtassar Tafseer Ibn Katheer, vol. III p.364.

(49) Jame' Ahkam al Quran, vol. XVI, p.332.

(50) Ibid, vol. XVI p.p.331-332.

(51) Surat "Al-Nur", verse 12.

(52) Jame' Ahkam al Qur'an, vol XII, p.203.

(53) Kawa'ed al-Ahkam, vol. II p.62.

(54) An excuse may be there in the light of the explanation given by some scholars concerning the verse (verily some suspicion is a sin) that what is meant here in this context is acting upon suspicion but not mere suspicion. Ibid.

(55) Al Mughni, vol. VII p.422.

(56) Criminal Legislation – Abdulqader Ouda vol. II p.425.

(57) And one may well wonder: isn't it possible that the hymen has a preventive benefit for the girl during post-delivery period? since the opening of that hymen becomes too little to allow the leakage of detrimental dirt and rotten substances to the girl. Isn't it also possible that the hymen has a function in the regulation of menstruation blood during the first period when the girl attains the age of puberty, and that the role played by the hymen may have a psychological benefit? the answer may be negative. Yet, it does not confiscate the formerly mentioned legal consequences and wisdom.

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DISCUSSION

MEDICAL PAPERS
AND
FIQH & LEGAL PAPERS
ON
"MATTERS RELATED TO GYNAECOLOGY"



DISCUSSION

Chairman, Dr. Abdulfattah Shawqi

Brothers and sisters, I declare the first session of the third day open. I'd like to announce some changes in the program: This first session will be on "Plastic Surgey, Medical Concept and Practice" by Dr. Majed Abdul Majed Tahboub, then the Islamic Jurisprudence response to this lecture is "Provisions of Islamic Jurisprudence for Plastic Surgey" by Dr. Muhammad Othman Shabir. As you notice, in the original program handed out to you earlier, all the medical researches are in one session, this session, five researches. However, the secretariat preferred to present the related medical researches and jurisprudence researches together, which may prove more beneficial.

The second session will be, God willing, as scheduled and the topics are: "Menses, Puerperium and Pregnancy, Minimum and Maximum Periods" a juristic study by Dr. Omar Al-Ashqar and a study on "Meaning of Menses, Puerperium and Pregnancy" by Dr. Nabiha Al-Gayyar.

The third session will be on "Hymenorrhaphy". Three speakers will talk on the opic: Dr. Kamal Fahmi Abdulqader, His Eminence Sheikh Ezzuddeen Al-Khateeb Al-Tammimi and Dr. Muhammad Naem Yaseen.

On the fourth session today we'll have "Fate of Fertilized Ova" by Drs. Abdullah Basalamah and Ma'mun Al-Haj Ibrahim. And the last topic "Sexual assault" by Dr. Seddiqa Al-Awadi. Half an hour is assigned to each of Dr. Majed and Dr. Muhammad Othman Shabir. Then we'll have kept nearly another hour for discussions and comments. I hope those who should like to raise points for discussion or to comment would send heir names in good time to be able to listen to as many as possible.

I give the floor now to Dr. Majed Abdulmajeed Tahboub, Head of Plastic Surgery Deprtment at Ibn Sina Hospital to speak on "Plastic Surgery: Medical Concept and Practice".

Presentation of the Research by Dr. Majed Tahboub (Research Section Page No. 389).

Chairman Dr. Abdulfattah Shawqi

Thank you Dr. Majed for your valuable brief lecture. We're left now with Prof. Dr. Muhammad Othman Shabir to speak on "Provisions of Islamic Jurisprudence for Plastic Surgery". He has divided the research into three parts: Beautifying hair through artificial lengthening, removal and surgery, the second beautifying body by tattooing and indelible marks and the third part on surgical reconstruction of organs.

The research starts on P. 100 of the hand out you have. I give the floor to Prof. Muhammad Othman Shabir.

Presentation of the Research by Dr. Muhammad Othman Shabir (Research Section Page No. 425).

Chairman, Dr. Abdulfattah Shawqi

Thanks to Dr. Muhammad Othman Shabir. Dr. Majed Tahboub has presented his paper concentrating on the scientific and medical aspects as well as the modern scientific spheres of what is known as plastic surgery and clarified that it is constructive, corrective and restorative surgery rather than just cosmetic.

We have also listened to some Sharia opinions on hair cosmetics, body paint and figure cosmetics by means of organ reconstruction. We have, God willing enough time, until 11:45, to discuss this important modern topic which is very important to all of us Sharia-wise, and medical-wise as well. I give the floor to Dr. Haitham Al-Khayyat.

Dr. Haitham Al-Khayyat

When we speak of the normal creation do we mean the normal creation of the person examined or the normal creation of human beings? if it is the normal creation in general, i.e. if what is done is not going to change the normal creation of human beings, like adding or taking off an organ — deforming or something of the sort, would this be considered altering the creation of Allah? If it is a surgery to repair or reshape a certain organ in a way that would make it harmonious with the normal creation of human beings, would this be altering the creation of Allah? I believe that this is a point which we should decide on in the beginning, because on this we will base the different rulings concerning these surgeries of which some are performed to cure a disease, and these. I believe, are not controversial because the disease is a deviation from the original creation, so all of these

surgeries may not be considered in our discussions. The main issue in our discussions is to perform certain plastic surgeries for cosmetic purposes, so if the changes made are within the normal creation of human beings, will they be permissible or not?

Dr. Hussain Al Jazaeri

I want to ask a different question: A woman who acquired wrinkles all over her face and she's afraid that her husband might marry a younger woman and her husband doesn't object to her having a face-lift-would religion object to that? Thank you.

Dr. Ibrahim Al-Sayyad

I'd like to consider for a while two of the Prophetic Hadiths, the first is the one said by Iban Abbas:

> *"Cursed is the woman who artificially lengthens her (or someone else's) hair, and the woman who asks for artificially lengthening her hair, the one who plucks hair from her face and the one who gets her hair plucked, the one who tattoos and the one who asks to be tattooed, the women who pluck hair and those who get their hair plucked, and the women who make spaces between their teeth for beautification changing what Allah has created." And in the end all these were said to have one common trait characterizing them as far as their intentions are concerned: "changing what Allah has created".*

Thus, the end of these two Prophetic Hadiths shows the intention behind prohibition, disapproval or damnation — that the human being is created in a way that he doesn't like, though it is the "goodliest mould" and His will is to create this face misshaped either by birth or by a disease. Thus, the point is reshaping this misshape in face to what the normal shape of a human being is and not his own shape.

The creation of human beings in a certain shape is definitely willed by Allah. However, if there's a woman afflicted with what we call total alopecia — all the hair in her head, face, even her eyelashes have fallen; a woman who seeks a permissible life with a husband who can't bear her repulsive appearance, what evil or harm will there be in lengthening the hair of such a woman with the hair deemed permissible or with human hair. It is justifiable and she is not doing it to alter the normal creation of Allah. This is what I seek the opinion of the Jurists about and I would, with a safe con-

science, advise a woman afflicted with this disease to lengthen her hair with whatever she wants to use.

H.E. Dr. M.S. Tantawi

In the Name of Allah, the Rahman, the Merciful.

It seems that we're going to spend a long time discussing this issue which Dr. Shabir dealt with at length, Sharia-wise, in his over-40-page research on this issue, a significant study which quotes numerous jurists. In response to the three questions of Dr. Al-Jazaeri, Dr. Al-Khaiyat and Dr. Al-Sayyad, I generally believe that beauty is an appearance prized by Islam and that the Hadiths forbidding certain things may be taken by some people to aim at making plastic surgery repulsive, but I believe that those Hadiths aim at forbidding plastic surgery performed for purposes of deception, fraudulence, boastfulness, bragging or extravagance that would lead to the alteration of the creation of Allah, highly exalted and glorified be He, or similar purposes that sound thinking would not accept. However, if plastic surgery is necessary to avoid the husband's rejection of his wife as in the case of alopecia presented by Dr. Al-Sayyad, or the case presented by Dr. Al-Jazaeri of a woman who wants to become more beautiful for her husband lest he should want to marry another woman since she suffers a condition that needs some plastic surgery; I believe that these are necessities that will make it permissible for a woman to make herself beautiful for the sake of her husband within the accepted limits that wouldn't be considered fraudulence or deception or anything of the sort. However, plastic surgery is generally accepted as long as it is within the reasonable framework of being intended for the sake of the husband and for winning his love which is exhorted by Islam. Therefore, I believe that, generally speaking, plastic surgery in such cases is permissible in the Sharia for maintaining family and matrimonial bonds. May Allah guides us to that which is right.

Dr. Abdullah Basalamah

Allah is beautiful and loves beauty. Certain conditions are aquired by man at later stages of life than at birth, puberty or a short time after it. An unmarried girl might start having a moustache and a beard, so depilating such hair is a sort of treatment, it is not alteration of Allah's creation. Dr. Shabir recommended, among other things, that depilation of hair may be made permissible to married women only, but what about those girls who want to get married and were afflicted with a disease that resulted in a deformity?

Prof. Dr. Hassan Hathout

The research presented is a very rich one, but, with all due respect to all the quotations of jurists listed by Dr. Shabeer, it seems that they permitted plastic surgery as a means of treatment from a disease. In our age many diseases have been discovered, thus mental disturbances are now recognized as diseases that were obscure to our predecessors. A woman may have a nose a metre long and 10 metres wide and be satisfied with it and may find some man who likes and praise it, so may Allah bless them; but she, and the people around her, may feel that she is ugly and thus develop a complex that should be treated otherwise she'll shun society or live in the dark damning her bad luck, or may try to deviate or escape.

The Hadith of the Prophet, may the Blessings and Peace of Allah be upon him, is not only connected with alteration of the creation but also conditional upon prejudicing moral standards, but if woman seeks to alleviate ugliness and to increase beauty without prejudicing moral standards. I believe that doing this is a sort of mercy and is rather harmonious with what Allah addressed His Prophet with:

> *AND WE HAVE NOT SENT THEE EXCEPT AS A MERCY UNTO THE WORLDS.*

I will perform these surgeries if I can and I'll never refuse such requests if I can and I believe that this is more of the path and mercy of Allah.

H.E. Sheikh M.M. Al-Salami

In the Name of Allah, the Rahman, the Merciful. I'd like to first, express my deep appreciation of this morning's presentation of Dr. Tahboub's research which was comprehensive and did, in fact, enlighten us in many aspects of which I was not aware, so I learned from it. I'd also like to thank Dr. Shabir for his rich comprehensive study that shows depth in research and great effort, so may Allah bless him for this work. Now to go back to the issue discussed:

Plastic surgery, as Dr. Tahboub said, is new and therefore we can't trace any reference to it in the sayings of ancient Jurists but Dr. Shabir endeavored to deduce the relevant Judgements in accordance with what was said by ancient Jurists who based their opinion on two authentic texts, a Qur'anic one,

> *AND I WILL COMMAND THEM SO THAT THEY WILL ALTER THE CREATION OF ALLAH,*

and a Prophetic Hadith,

"Allah cursed the woman who artificially lengthens her (or someone else's) hair or asks for her hair to be lengthened".

As for the verse, concerning satan's domination over man in such a way that makes man alter the creation of Allah, this is not a Qur'anic ruling but just a deduction from the superficial meaning of the verse; and some thought this is manifest in altering creation in animals, "they will slit the ears of the cattle", so it is connected to making animals suffer in different ways; and some considered that it is to be explained in the light of the prophetic Hadith,

"Allah cursed the woman who artificially lengthens her (or someone else's) hair or asks for her hair to be lengthened".

The Hadith of the Messenger, may the blessings and peace of Allah be upon him, as we listened to it, is clear in parts and is not clear in other parts; the Jutists know very well the meaning of "the one who tattoos" and "the women who make spaces between their teeth for beautification", but the meaning of "the one who plucks hair from the face" is not clear, but it is understood by each one according to his own discretion; for it means penciling the eyebrows to look beautifully arched, and it also means making the eyebrows thinner so that they'd look like a crescent, suppose some pretty girls were seen one day with eyebrows thinned and eyelashes pencilled, is this included in plucking hair from the face? Possibly. However, I believe that we all agree that among the sharia rules is the one that states the reason why devotional acts of worship are based on enjoined duties, simply because such acts are only acts of worship, i.e. the principle is showing that one acts in obedience, compliance and out of resigning oneself to the will of Allah. Yet, as far as human dealings are concerned, these are based on understanding and on judgements readily admissible to human conception. The issue considered, I believe, is not related to devotional acts of worship nor to enjoined duties; it is a reasonable issue, and therefore, I've found out that the distinguished exegicists especially contemporary ones, sheikh Muhammad Al Taher Ibn Ashour, may allah bless his soul, in particular; when he commented on this verse,

THEY WILL ALTER THE CREATION OF ALLAH,

and mentioned the Hadith, he reasoned that it only applies to what it states for those things only done by prostitutes at that time while noble, honourable, virtuous women never did (only women who were accused of being irreligious and not adhering to moral codes did those acts). Thus, in order to protect the honour of man and woman and to keep women from degrad-

ing to the level of looking like prostitutes, the prophet, may the blessings and peace of Allah be upon him, forbade women to do those acts. When Sheikh Ibn Ashour, may Allah bless his soul, speaks about the wisdom behind forbidding such acts, he says that Kohl changes the colour of eyes and makes them look more beautiful, and Kohl is unanimously agreed to be permissible; and the woman who does physical exercise alters the creation of her body to what is more beautiful and attractive, her figure becomes goodly, her limbs straight — not fatty; can any one say that women shouldn't exercise to become more attractive?.

If such is the case, and many of the fundamentals of beautification are based on physical exercise, then we should stop here and consider: how do we permit women to exercise in order to become more beautiful and attractive and when they want to achieve the same aim through surgery we say that it is impermissible? This issue needs to be reconsidered.

I'd like to point out two things that I was astonished to hear from two men whom I really respect and hold in esteem, what I mean is being so hasty to say that with a safe conscience I'll advise any woman whose hair has fallen to lengthen her hair or that I'll perform those surgeries if I can;

> *AND IT IS NOT FOR A BELIEVING MAN OR A BELIEVING WOMAN, WHEN ALLAH AND HIS APOSTLE HAVE DECREED AN AFFAIR, THAT THEY SHOULD HAVE ANY CHOICE OF THEIR OWN.*

A challenge like this is not a challenge to us jurists, it's a challenge to legislation; we ought to be patient and wait until we reach an opinion that satisfies all of us, and whatever is the opinion we reach, we follow.

To go back to my friend Dr. Shabir as he says in the conclusion of the third issue that the doctor should be sure of the success of the operation. As far as we know, a doctor, no matter how clever, intelligent, experienced or knowledgeable he might be, can never be sure of the success of any surgery whatsoever; he'd say, for example that the percentage of success is 90% or that the greater possibility is success, and that is how he'd be sure, he'd be almost sure not absolutely sure. To conclude, I'm convinced that alteration of the creation of Allah applies to what is meant to have a detrimental effect on the community by means of evil fraudulence in the sense that someone who commits a crime goes to a surgeon and asks him to change his face so that he wouldn't be recognized. This happened in the after match of World War II and many of the Nazis managed to escape unrecognized thanks to such surgeries. Ever since then and till now and

as the time goes on such surgeries that hide criminals and delude Justice will keep operating.

Second, plastic surgery that involves a woman deceiving a man who's asking her hand for marriage, a surgery whose effect will not last for long and after a while the husband will see the original real face, this is evil, it involves deception and fraudulence. I believe that the woman should live with her husband in mutual trust and undergoes surgery if mutually accepted and desired. We shouldn't be hasty so as to say that it's prohibited from the very beginning. I admire the opinion of Malik, when he was asked about a case and he found that forbidding is the more likely, he didn't say. "It's prohibited" but used to say, "I disapprove of it". Therefore, his followers, after him, follwed his path, showing the disapproval intended, is it for maintaining high opinion of someone or for rendering something impermissible. I believe that plastic surgery is permitted as long as performing it does not harm other people. I believe that there isn't a clearcut impermissibility for it.

Dr. M. A. Al-Ashqar

Thank you Sheikh Salami for this valuable explanation and may I add that fraudulence may not be traced, at a later time, in the woman or man who had the surgery in person, but it may appear in the children as a hereditary disease passed on from one of the parents. Therefore, if the husband knew that this woman had a certain disease or deformity; but he married her free of such defect not knowing that it will appear in his children, he probably wouldn't have married her. I hope this issue will be taken into consideration.

Sheikh M. M. Al-Salami

What His Eminence said is probable, but probabilities in Islamic Sharia are of two types: possible probabilities which are to be considered when a jurist is examining a certain case, and improbable possibilities which should not be considered by the jurist at all, otherwise matters would get complicated. If we take the improbable possibilities into consideration I'm going to say that it is impermissible for me to leave this place lest I have a car accident. The possibility that I crash my car into another car and get killed is a valid possibility and so is the heredity issue — it is not definite, nor does it approach any degree of certainty, it is a probable possibility. I don't think that if a woman has some plastic surgery in her face to make it look more beautiful, she will be harming me, or that her children will have the

same defect. Second, the children don't inherit hereditary diseases from the parents only, but such traits are carried through out a long line of descent.

Chairman, Dr. Abdulfattah Shawqi

There is a written question... What is the attitude of Sharia towards a Muslim doctor who knows and witnesses a female patient having surgical operation for the purpose of changing sex, and what is the attitude of Sharia towards the Muslim doctor who carries out such an operation, and what should the Muslim doctor, who knows the case of this patient, do? Should such a surgeon disclose her secret or keep silent about it, and should a surgeon earn a living out of conducting sex change operations? The floor is now given to Dr. Abdulrazzaq Al-Samara'i.

Dr. Abdulrazzaq Al Samerra'i

A person is sometimes born having a congenital opening in the eyelid, and there is, also, the case of sagging eyelid in old age; would it be deemed a change of what Allah has created if such things are amended through surgical operations? There is also another thing; a person is, sometimes, born with a large spot in or beneath the eyelid, which blemishes his features and appearance. Will it be change of what Allah has created if this spot is removed by surgical operation?

Dr. Muhammad Sulaiman Al-Ashqar

Dr. Muhammad Sayed Tantawi is kindly requested to give the answer if he so wishes.

Dr. Muhammad Sayed Tantawi

The answer for the question raised by Dr. Al-Samera'i is that there is no inadmissibility, neither in the Sharia nor rationally, to performing such surgical operation for a child, for this is a necessary thing and there is nothing wrong with it. As for the first question, which was about change of a male to female or a female to male, I in fact, cannot give an opinion on such a question promptly unless I am cognizant of some of the surrounding conditions and reasons which justify such a course of action. Some of my brother jurists may have a clearer idea in this concern. But as for me, it happened that when a similar case with all concomitant conditions was submitted to me in Egypt, I said. "This is permissible in case it is neces-

sary'', for no one knows better than medical people whether there is a necessity or not?

Dr. Muhammad Al Ashqar

Thank you Dr. Muhammad Sayed Tantawi. Sheikh Ezzuddeen Al-Khateeb is, now, kindly requested to give the answer.

Chairman, Dr. Abdulfattah Shawqi

I beg to draw your attention that the subject of sex change will be discussed in the next session, and in order to keep to what we have already agreed upon no interruption will be allowed. Mr. Omar Al-Ashqar, please come up.

Dr. Omar Al-Ashqar

What Dr. Haitham brought forward is, I think, the pivot of this research, and therefore it is necessary to exhaustively explain the reason for this prohibition which is about changing of what Allah, has created. There are cases the causes of which can be determined and known so judgement can be given, other cases are inapplicable and others fall in between and therefore need to be reviewed. The Messenger of Allah (PBUH),

> *"Has forbidden haughtiness (or pride) and said that a proud person with even the weight of a mustard seed of pride in his heart shall not enter paradise".*

A man said:

> *"O Messenger of Allah, a person would love that his dress and shoes are fine, whereupon the Messenger of Allah, told him that was not pride".*

This may, in fact, be thought as a kind of pride, whereas it is actually not so. Therefore the Messenger, explained to the man that such a feeling was not pride. So, the creation of Allah is but His own. Therefore, just as any person should not intrude upon or imitate certain qualities and acts of Him, such as by painting and sculpturing figures as well as being proud, so he should possess some qualities such as mercy and pity. This is the main causative factor in the subject.

There is no doubt that change of shape of the face, as the doctor said, by say, removing and fixing bones as well as sex change by diminishing or enlarging breasts is change of what Allah, has created. But it part of a per-

son's body is damaged in a fire or an accident and is restored to normal shape, this is never an act of changing what Allah has created. There remains a moot question; it is controversial as whether there is change of what Allah has created or not, that is in the case of existence of an extra finger or a harelip, would it be change of creation of Allah if these things were surgically amended? Viewpoints may differ on this issue. However, I can say that there, are certain things which definitely constitute change of what Allah has created, and there are other things which categorically do not represent change of creation of Allah and there is a third group that is debatable as far as change of creation of Allah is concerned.

As regards the point kindly made by Dr. Hassan, I say if we gave free rein to such a matter what would be the consequences? I think it is not permissible to change sex, but what if a person is dejected because he feels that his present sex does not suit him or her? This is similar to the issue of blemished nose or face. This means that it is not possible for us to set a limit for these matters... and we can't draw the line.

Vice-Chairman Dr. Muhammad Al-Ashqar

I would like to explain the fundamental rule which is the most acceptable in this issue. This rule is that Allah is the Creator, that the Fashioner is one of His attributes and that among the indications of this creation is variety, diversity and difference; there is no person who is a duplicate of another, and nobody completely resembles another one in any quality whatsoever. Among this variety and diversity is existence of the healthy and the sick, the ugly and the beautiful. Ugliness is undoubtedly a Sharia intention in this matter. By "Sharia intention" I mean divine intention that ugliness should exist, for it is Allah who has created everything in the first place, and existence of ugliness indicates existence of beauty, for things are distinguishable by contrast; if there was no illness we wouldn't know health, and if ugliness did not exist, we wouldn't know beauty, and similarly we wouldn't know beauty, and similarly we wouldn't know night if day were not there. It is contrasted things that show the Ability of the Creator in the first place. They, moreover, indicate that He is the Author of both that which is good and that which is evil,

AND WE SHALL PROVE YOU WITH EVIL AND GOOD AS A TEMPTATION AND UNTO US YE SHALL BE RETURNED.

The healthy, the sound and the beautiful praise Allah, for the grace they were vouchsafed, and the afflicted and the sufferers have patience and resign to Allah's will anticipating reward in the Hereafter and asking

for mercy of Allah, be He, as the Prophet, says in the Hadith:

> *"Allah, highly glorified be He, says: That whom I try by depriving of his two eyes and takes patience, I shall, then, grant him (or her) no reward less than paradise".*

A person may be born blind and there is no way to restore eyesight in this case. This is undoubtedly an intention of the Creator and it would be comprehensible for us if this fundamental rule became an unquestionable established fact among us. This fundamental is closely connected with belief. I would like to stress that the issue is connected with belief. Look, for instance, at what happened when the companions laughed at Abdullah Ibn Mas'oud for he was bow-legged, and this is of course a kind of deformity, thereupon the Prophet, may the blessings and peace of Allah be upon him, said:

> *"Any creation of Allah is good, and this is a creation of Allah".*

Accordingly any creation of Allah is good. The Hadiths that specified impermissibility of changing what Allah has created have, in fact focused on the aspect of deformation or the wish for improving something thought to be ugly by means of tattooing, making spaces between teeth and the like. A woman may think that sticking of teeth together is not beauty, so she tries to make something more beautiful, in her or his view, by creating spaces between teeth so that they look prettier. This is violation to the creation. It is as though the doer means to say to Allah, so mighty and glorified is He, "You have not created them in a fine way and I want to recreate them in the proper and finer shape". Here is where violation lies. The question is not restricted to fraudulence. I admit that there is faudulence, and this is what many of the speakers concentrated on: that it is not allowable for the woman to artificially lengthen her (or anyone else's hair) nor to do things forbidden by the Prophet, such as tattooing, for the purpose of adorning herself for husband or with the intention of getting engaged. This is among the intentions, I mean that fraud is a part, and not the whole, of the issue. The proof to this is that a woman came to the Prophet, with a daughter of her who had got a fever and all her hair had fallen out, she said:

> *"O Messenger of Allah, may I let her use false hair",*

Whereupon the prophet, forbade her and said:

> *"Allah has cursed the woman who artificially lengthens her (or someone else's) hair or asks that her hair be artificially lengthened".*

Though she wanted to do this with the intent of covering an existing defect which ensued from an illness. Nevertheless the Prophet, forbade her to do even that, for it is considered as a kind of violation of creation. It was as though he meant to tell her that her husband does he want false hair to be used? He wanted in fact! It is an act of violation on the creation, it was primarily a question of fraudulence and deception.

With regard to the question of treatment, intervention by the doctor to cure a disfigurement resulting from an act of man is undoubtedly not violation of creation of Allah, and it is not at all counted in this category, as it is the case when a person incurs an injury on the face and has an operation which is called plastic surgery though it is, in fact, just surgical treatment to reconstruct the face in order, to bring it back to the form in which Allah had created it. But what I would like to say is that it is, sometimes, not quite accurate to call this kind of operation plastic surgery — or beautification surgery — for there is no beautification in the very sense of the word, but just reconstruction of the face in the form, or nearly in ther form, it is created by Allah. This, in my opinion, does not need to be debated for there is no question that it is permissible. I also want to add to what Dr. Omar said about the psychological factor, that it is absolutely not allowable that it should be a reason for resorting to the so-called plastic surgery, for unrestrictively permitting this would mean that we interfere even with the creation of Allah by changing it, as it is the case when black skin, and apology is due to our brothers the Sudanese, is surgically changed. If I were created black by Allah I would remain black. If I could choose I would opt for white colour. Does this mean that man should go on changing what he thinks is contrary to beauty and thus interfere in the creation of Allah, highly exalted and glorified be He? This holds true, also, to conducting surgical treatment as in the case of the too long and too short nose, shape of the face, excessively tall or short body and too long or too short legs. If plastic surgery operations interfere in such cases to change the very form in which a person is created, and not something resulting from an illness, this would be violation of the creation of Allah, and should not be done.

As for the question raised by Dr. Abdulrazzaq Al-Samerra'i about the opening in the eyelid, and also counted in this the extra finger as well as certain other extra organs which are in excess of the normal creation, it is, in fact, this matter that does need to be carefully considered and reviewed; is removal of this extra organ, that is in excess of the normal form in which Allah creates man, an act of violation of the creation of Allah? I mean by "normal creation" the fact that man is normally created with five fingers. A

sixth finger will be in excess of the creation in general and is not a particular case of whoever has it. Therefore this matter is open to question. If a person views that the sixth finger and any other organ in excess should be removed or that a harelipped person or the one whose eye is congenitally defective should surgically be treated, this, in my opinion, would not be violation of what Allah, created, for these extra things are, in fact, not of normal creation in which man is formed as Allah, says indicating it

ASSUREDLY WE HAVE CREATED MAN IN THE GOODLIEST MOULD,

Chairman, Dr. Abdulfattah Shawqi

We have got only half an hour left therefore I hope that those who have questions, will be brief. It is clear that opinions still vary between full; or partial argument or full or partial rejection. We will try to let the participant jurists and muftis take the floor in the end so that their answers be the conclusion of this symposium.

Dr. Hussain Abduldayem

It is evident that we are faced with extremely big issues. As faced with extremely big issues, As a matter of fact after I have reviewed Dr. Shabir's research with him I thought that this subject was big enough to warrant a whole symposium or an ad hoc committee which includes specialists, be held more closed than this. The research includes basing deduction on some Imams' opinions. My attention was attracted by the excerpt from "Muhammad Ibn Al-Hassan": "And there is no objection to treatment with bone of a ewe, cow, camel, horse or any other animal, except for bone of a pig or human being which are impermissible to be used for treatment, regardless of whether it (i.e. any of such animals) is slaughtered, a carcass, fresh or dried out"'. I'd like to ask Dr. Majid: have you ever known that bones of ewes, cows, camels, or horses were used for treatment of currently existing cases of broken bones.

Secondly: Bone grafting is used for treatment of fractures, and bone grafting is, nowadays, performed only with human bones. Is this impermissible?

Thirdly: As doctor Omar said there are three categories one of which includes things that are quite evidently impermissible or disliked, another category includes things in which medical intervention is definitely to the advantage of the patient and is undoubtedly inductive to a better life, the third category is that including things which are in between, that is to say it

is doubtful as to whether they are permissible or not, this category is found in all realms of life. The doctor is asked to avoid them as much as it is within his ability to do so, and agree to nothing except to what is really necessary.

My attention was also attracted by what Sheikh Abdulrahman said about the Hadith concerning Ibn Mas'oud wherein the Messenger of Allah, said:

"Any creation of Allah is good".

When I heard this it struck me that the Messenger of Allah was the best psychologist in this community; Abdullah Ibn Mas'oud was bowlegged and operations to amend such a defect were not available at that time. But nowadays if my son's legs were bowed, should I not have him surgically treated? In some countries I would be put to trial if I were negligent towards my son in this case. Circumstances do greatly differ. The Sharia prefers a Muslim who is strong and able, and serve the community, and not a crippled and complex-stricken, Muslim who is in need of others' assistance.

Vice-Chairman Dr. Muhammad Sulaiman Al-Ashqar

I have a group of written questions. The first is: if a women's eyebrow is too broad or hairy in excess of the normal and the husband consents to having it trimmed, what is the ruling of the Sharia for this?

Another question says: you have kindly explained that it is not permissible to remove any organ in excess except with permission of the person concerned. Let's suppose that there is a child with a defective toe which is separated into two toes and makes a foot look bigger or hinders walking and causes the child to fall down often, and suffer. What should the mother do if changing the creation of Allah is impermissible? Bearing in mind that a child cannot say what handicaps him.

There is yet another question about coloured contact lenses; are they permissible or impermissible? Dr. Haitham repeats requesting an answer to his question. It seems that he is not satisfied with the answer already given.

Dr. Kamal Nageeb

Problems that face plastic surgery can, in fact, be divided into two categories: congenital and aquired problems warranting treatment for

medical, psychological or personal reasons. I have an inquiry about a child born with indefinite sex, namely it can't be determined whether he is male or female. Sex, however, can be determined through cytogenetic exam. Is change of sex, in this case, considered change of creation of Allah?

Dr. Najm Abdulwahid

I thank Sheikh Tantawi. In answering a question about sex, he said that we should refer to the doctor. As an endocrinologist I met with cases of men who wanted to change to women, and women who desired to change to males. I can, therefore move from this point to the question raised by Dr. Omar Al-Ashqar or the inquiry concerning psychological complex. I can define the problem by indicating that there is a type of psychological complex which is latent in our inner selves; it is the type that is meant by the verse: And as for him who dreaded standing before his Lord, and restrained his soul (self) from lust. Lust, here, is the psychological complex, verily the Garden! — that shall be his resort. I have also found a type of women as well as of men who would change sex simply for the sake of satisfying a desire; the purpose is just to enjoy being the other sex. This, in my conviction is impermissible for it represents change of what Allah has created.

As for the other type, referred to earlier, that of a diagnosis can be established. I'll cite an example for the sake of motivating consideration. It is about a woman with full feminine qualities whom we discovered was actually a man for she had got a testicle and a very high proportion of male hormone, but because this hormone is not effectively active due to refractions of target cells she is apparently a female with all feminine qualities. If such a woman had the operation would it be considered a sex change? She looks a female indeed, but only on the outer appearance. So if an operation was performed in order to remove this testicle, would this be impermissible or permissible? We can tell the mufti that it is permissible on account of the fact that this girl was born, raised and grown up as a female, and it is simply in our hand to rid her of her predicament by removing this testicle through an operation. This was about the second point. I conclude from these two points that a reliable Muslim doctor should be referred to, as was previously recommended, in such cases in order that particular details can carefully be studied. But if this psychological complex is really of the type that is attributable to not fearing Allah or to a mere desire to change the creation of Allah, this will, then, be a disaster.

I move to another subject, which was brought forward by Sheikh

Omar Al-Ashqar, concerning size of the breast in particular, for we also have here two problems, the first is undoubtedly medical such as the adolescent girl whose breasts grow to an abnormally large size, and neither a drug nor any other method is available to reduce the size of the breasts except surgery. We do this just out of mercy, for a size this large can be really cumbersome. The doctor, I think, can intervene in such cases not just because he wants to assume the role of the mufti, but for such matters do afflict us personnally and piety-wise. It this patient were my sister, what would I do for her? This is, therefore, an important point. But if we look at the opposite case, to say, for instance the breast which is too small and that is desired to be enlarged, we have, thanks to Allah, hormones, tablets and medicines which we can prescribe. So, if we are able to use tablets to enlarge such breasts and are unable to reduce a too large one by tablets or medicines, then how about resorting to surgery in such cases that are really necessary?

Dr. Yehia Naser Khawaji

With regard to the hermaphrodite, it has been stated that if femininety and masculinity are equal in a person, he is to be left as he is and resign himself to the will of Allah highly glorified be he, But if it later becomes clear that masculine qualities exceed feminine ones he is to be changed to a male and the reverse is true, and the part in excess must be removed. This is clear in the opinion of the majority of Imams, and I am of the same opinion. As for changing the creation of Allah, there is no objection to the removal of a flagrant defect in a woman. What proves this is that the Prophet, allowed the man whose nose was mutilated to have a nose made of silver and when it got infected he substituted (with the Prophets permission) a golden nose for it. It is allowable to remove a defect unless this is done with the intent of deception; that is to say if a woman intends to deceive fiance or husband, it is not allowable for her to beautify herself in this way. But if there is a defect, it is then allowable.

Dr. Essam Al-Sherbini

It has been clear from the speeches made by jurists during discussion that the Hadiths and evidences stated are concerned with deception, imitation of prostitutes and change of the creation of Allah for the purpose of deformation. This, in fact, comes under the category that was stated by Dr. Omar and which includes things that are debatable, open to independent judgement and in which the doctor and the jurist can cooperate to reach a

decision. I'd like to mention a very simple example, that is hairiness. This is not an organ to remove, yet the Messenger, may the blessings and peace of Allah be upon him, has forbidden plucking of white hair, and in another Hadith he saw a hairy man and said:

"Change this, change it but avoid pluck"?

The Messenger gives us a chance to beautify ourselves and seek to have a better appearance, and that Allah is beautiful and loves beauty provided that this is not done with the intent of cheating or falsely appearing young or pursuing moral standards which are not accepted or recommended by Islam. This also avails us of the opportunity to study the cases now before us with their different levels. There is difference between the woman, who was mentioned by Dr. Najm, whose breasts are excessively large and cumbersome and which cause her harm, fatique and skin rash and thus need to have an operation and another one who wants to work as a waitress in a coffee shop or a restaurant and accordingly desires to expose her breasts. Their cases are definitely different. He also mentioned different levels of sex, and we have already discussed this. What I want to say is that judgement is not one and the same for all cases, the subject is open to debate and keeps changing with time. A bow – leg is nothing but a disease and it is not amended just for the purpose of elegance or in order to take part in a race, but because if it is not amended it will cause arthritis or the like. Therefore, such cases must be individually studied. The prescribed texts are not as strict as they appeared to be in the first reading. There is enough room for mutual understanding and agreement between jurists and doctors...

Dr. Muhammad Sulaiman Al-Ashqar.

Here is a written question which is, it seems, the last medical question. What is the ruling on a woman who has breast cancer and has a mastectomy, should a plastic surgery be performed for the excised breast or should she be content with what Allah has ordained? And what is the ruling on provision for performance; of odontoplasty in order to repair a minor deformity in tooth alignment and contiguity? And are the teeth to be left deformed or repaired so that she can chew food better and talk in a clearer way?...

Dr. Muhammad Aarif

I beg your pardon for having to comment. I wouldn't dare to, had I not noticed evidently conflicting opinions about sex change. I'd like to ask for

explanation of certain points so that any vagueness is cleared away and in order that our distinguished Ulama can give opinions on this matter. I appreciated the opinion given by Sheikh Muhammad Sayed Tantawi that every case must be studied individually with respect to medical circumstances and surrounding conditions in view of the fact that this issue is medically intricate. We have recently seen, on the medical aspect, that many new scientific horizons and viewpoints have appeared and shed lots of light on facts that were surrounded by much mystery in the past. I'd like to divide cases of sex change into two categories.

The first, in which a sex is, congenitally, either male or female but the outer appearances of the body structure are of the other sex and accordingly plastic surgery operations, for such cases, will be no more than restoring the outer structure to the normal physical qualities of the original sex. The other category contains those cases in which the sex of a person is distinguishable as per created and the outer appearance is in conformity with the qualities of this sex but later is subjected to change to the opposite sex or to the qualities other than naturally disposed to. This group is divisible into two types.

The first type includes persons who are supposedly created in the form of males but the psychological structure of their personalities as well as their behaviour grow to be of the opposite sex. This group, as a matter of fact, constitutes a big problem in the face of which doctors have been at a loss generally and on the personal level, because such persons do not have any desire to be the other sex, but they, in fact, find difficulty in adjusting themselves to their original sex and appearance.

The other group, to which Dr. Najm referred, are those persons who desire to change sex for motives related to personal behaviour and temperaments. Here, we find ourselves faced with an important question, which also confronted us in the first type of the second category, namely: are we to consider the case of this group a psychological disease for which medicine may be unable to find a cure by any means whatsoever owing to the fact that many worldwide researches have been conducted and it has been proved that any change is almost practically impossible? or are we to consider the condition of those people, though attributable to a psychological disease, something which we should avoid on the basis of our Islamic standpoint and in compliance with the teachings of our upright religion, and in this case how can this problem be solved? These cases, as I know, are rampant in the West and other societies that have nothing to do with the Islamic religion. Nonetheless, they have, as I know, started to infiltrate

our societies. And though this has taken place on a limited scale, it is expected, sooner or later and if things kept to the present course as we see, that we are faced with a problem for which we will find ourselves at a loss as how to cure or give an opinion. Therefore, I hope that their Eminences the jurists will furnish us with an opinion that is convincing to you as well as to us.

Dr. Muhammad Sulaiman al-Ashqar

Thank You.

Dr. Muhammad Naim Yaseen

My speech will include, if Allah so will, balancing, hormonization and reconciliation. I shall begin, as Sheikh Abdulrahman Abdulkhaliq did, by making faith the base for my argument. What prompted me to that is the Hadith which included the clause

"(the women) who change the creation of allah".

I have been honoured, sometime in the past, by aquainting myself with questions of creed then I did some humble writings about them and I read Muslim scholars' definition of Fate. I remember that Imam Ahmad Ibn Hanbal defines Fate as "the creation of Allah who has created every thing and it has been preordained by Allah, highly glorified be He, who is the creator of everything". The Hadith says:

"who change the creation of Allah".

Everything is creation of Allah, illness is creation of Allah, and change of what illness causes is also a creation of Allah. Omar Ibn Al-Khattab, when Fate was mentioned, upon his refusal to go into the plague-stricken town, Amwas, said:

"We are running from what Allah had ordained to what Allah has ordained".

Therefore the original creation of a person is a creation of Allah, and any change that occurs to it is also a creation of Allah, highly glorified be He. A man is not said to change, the creation of Allah, according to this conception, unless without a warrantable need. Or what else should then the criteria be? Ibn Al-Khattab wouldn't have said

"we are running from what Allah had ordained to what Allah has ordained"

without there being a rationale behind such a statement.

Dr. Ibrahim Al-Sayyad said that there had to be a rationale, otherwise everything that befalls man is preordained, such as his having a too long nose, the doctor's changing this nose, etc. There are factors that are unknown even to the doctors and they have nothing to do with the original creation of Allah, highly glorified be He. The change may take place as a result of an internal disease in the mother or of a drug taken by her without the doctor being informed of it, and consequently the nose, arm, etc is congenitally too long. Therefore, since the question is based on what has been created by Allah to what had been created by Him, highly glorified be he, the determinant about that is the Sharia approved need or the Sharia Justification, then a comparison must be made between this need and the balances and criteria that were stated by our worthy brother Dr. Muhammad Othman Shabir, so that no conflict may exist between this need and the rights of other people. Balancing must be made; if there is no need, change is then not allowable, and at this point the doctor's role is to assess the need. The doctor may say: this needs, and that does not. If there is a need, he can then change the creation by performing plastic surgery operation, and this will be part of what Allah has ordained, and he is, in this case, similar to the one who

> *"is running from what Allah had ordained to what Allah, has ordained".*

as Omar Ibn al-Khattab did. This is a point.

The other point is a balancing between the viewpoints of the two kind brothers, Dr. Omar Al-Ashqar and Dr. Hassan Hathout - he is my neighbour here and at home - I mean the question of the psychological factor and that of changing a too long nose and other abnormal organs. Dr. Shabir mentioned a criterion, namely "the normal creation". Dr. Haitham Al-Khaiyat has cited it too. Well, could he have seen it with his own eyes? This may happen occasionally. This is not normal, that is why I think that the question of "normal creation" can be used as a criterion in reconstructing those abnormal organs even if they were not because of an illness. Take the eye for instance; Is it allowable to amend squint. This is considered a blemish. Some people have too small eyes, and some others too big ones. Their appearance is actually different from the normal one; I mean such things are congenital; Is it, then not allowable to amend them because it will represent change of what Allah, has created? I understand that everything is created by Allah, and whenever we run away from what Allah had ordained to what Allah has ordained, we do this when prompted

by a need. This is my rule. So if there is a need, it is to be assessed by the doctor first, and the concerned jurist may take part in such an assessment.

Dr. Abdulfattah Shawqi

Thank you very much. Few minutes have remained till the Call for Noon Prayers and there are many questions for the Sharia experts to answer. I recall to minds Dr. Haitham's question and the seconding made by Dr. Al-Jazaeri whom I hope will answer my question: is what is meant by "creation of Allah" the normal creation of people in general, or the form in which a given person is created. And we have had the answer. Sheikh Ezzuddeen Al-Khateeb is kindly requested to come up:

Sheikh Ezzuddeen Al-Khateeb

The basic rule in this matter, as his Eminence the Mufti of Tunisia reminded us is whether it is a cause-based matter, namely dependable on rationality and is not a matter of worship, for the Messenger, may the blessings and peace of Allah be upon him, has justified prohibition by saying:

"changing what Allah has created".

Therefore, since the matter is cause-based, it will, then. be easy for both jurists and doctors to reach good results on the subjects submitted before the symposium. This is one point.

The second point is that Allah, says in His Munificent Book:

ASSUREDLY WE HAVE CREATED MAN IN THE GOODLIEST MOULD.

Creation, here, means pre-setting; Allah, has pre-set man in the goodliest shape. He has best created him as He has done with the rest of creation. Man, in the ideal form, is a figure that bespeaks beauty. Therefore, when a person's figure stands out of the frame of the ideal form, as it is the case when his nose is too long or his right leg is much longer than the left and the like such form would be alien to the one that Allah wanted that man should be created in. Therefore, the normal form which was referred to by the jurists is the ideal form for man. Accordingly when an operation is performed for amending the nose, it won't be change of the creation of Allah for Allah, preordained that man should not have a too long nose or unproportional shape. When the operation is performed, things are returned to normal. So, the rules are clear before jurists and doctors. I

have a question. My brother participants' talk about beauty and proportionality has reminded me of an incident; Al-Abbas, the uncle of the Messenger. Came in on a gathering that included the Messenger of Allah, when he neared the Messenger of Allah he smiled and laughed whereupon Al-Abbas came to a halt and said:

What made you laugh, O Messenger of Allah?

The Messenger of Allah said:

"The beauty of the Prophet's uncle. Al-Abbas said: What is beauty in the man. O Messenger of Allah. The Messenger said: The tongue".

Now, my question, which I submit to the doctors, is: have you ever been visited by a lady asking to have her tongue amended or plastic-surgically treated?.. and thank you.

Dr. Abdulfattah Shawqi

We call upon His Eminence Sheikh Badr Al-Metwali Abdulbaset. Chairman of the Kuwaiti Opinion Ad Hoc Administration to kindly answer some inquiries and question.

Sheikh Badr Al-Metwali Abdulbaset

In fact I'd prefer to hear more than to speak, but now I have to speak. The best thing I heard in this subject is, in fact, the research of Dr. Muhammad Othman Shabir. I have however, some slight objection with respect to his statement that existence of higher probability of success is enough for determination of the success of an operation, I'd also like to comment on the question of sex change. Last week, to be exact, I heard a broadcaster, on the British Radio, say that in sex change the sex remained as it was whatsoever the change that occurred to the shape, is this true or not? Whatever we do substituting male organ for woman's genitals or the other way round, the sex would remain the same sex without any change whatsoever. If that's so, the question of sex change must be, as some speakers stated, on the basis that a hermaphrodite whose sex qualities are more of a male, is a male, and a female if these qualities are predominantly feminine - Anyway, this is something he must live up with. And these are always rare cases, and what is rare has no governing provision. the question of sex change must be dealt with very very cautiously. I mean the question of determining whether there is an increase or decrease of qualities of either sex.

The illness itself, as Dr. Naem said, is brought to being by Allah. Therefore, is this to prevent man from having himself treated? Disease is a creation of Allah, therefore, would it be change of the creation of Allah if you cured a person of a disease or performed an operation to rid him of a tumour or so? Improvement of the creation is one of the Sharia intentions, and, therefore we should not argue over this matter. If a person is hare-lipped, is performance of an operation in order to amend this defect a change of the creation of Allah? The solution to all these questions is, in fact, easy and simple yet, the doctors' opinion, in this matter, should be the one upon which we, as jurists, should rely.

We have heard a speaker mentioning some Hadiths. Some versions stated, when indicating prohibition of certain practices, "if there is a disease". It is well known that some fundamentalists have viewed that if Hadiths, referring to a given subject differed in that a version of which is non-restrictive and another is restricting, the non-restricting one is to be given priority over the restricting version. So if there is a need, there is then no objection to carrying out the operations which we call plastic surgery operations. If Hadiths are sound and include versions that vary from restrictive to non-restrictive, the non-restrictive is given priority over the restrictive. The need for operation, should be carrefully assessed, and it should not be argued over.

Dr. Abdulfattah Shawqi

Thank you your Eminence Sheikh Badr. We still have to hear answers for some questions from Sheikh Al-Salami, then we conclude the symposium with a word by the one who conducted the research Dr. Muhammad Othman Shabir, and allow me to give the floor for a minute to Vice-Chairman, Dr. Muhammad Al-Ashqar.

Dr. Muhammad Al-Ashqar

I'm not going to comment on all the matters which have so far been discussed. The course of discussion, the trend of jurists' opinion and everything is now clarified and there, is a way-out praise be to allah. There is only one question that has so far not been decided, I mean the one raised by His Eminence Sheikh Abdulrahman Abdulkaliq concerning the fact that the Hadith pertaining to the woman who artificially lengthens her (or someone else's) hair and the one who asks that her hair be artificially lengthened is sound according to the criteria set by the science of Hadith. Yet, the Hadith indicates that the woman's hair had fallen out because of fever

and that the Prophet, forbade her to add false hair to her head. This Hadith which some of the brothers have talked about how to deal with it. In fact we must raise, all over again, the question which was once raised or recommended in Pakistan; that the Islamic Organization for Medical Sciences should extract the Hadiths that concern medicine along with all defective, sound and approved versions so that we can know the core and crux of the matter and be sure whether there are only one or several different versions that pertain to a given subject as it was indicated by His Eminence Sheikh Badr Al-Metwali, for if there are several versions all of which are sound but conflicting, we, undoubtedly, will adopt the firmest, But when the forbidding Hadith is shown to us and we stand helpless before it as we now do, we then won't be fair towards the issue. Therefore, we should set our hands on all the versions pertaining to the subject, especially the Traditions that stand in the face of what is apparently advantageous to a common interest as it is the case now.

Chairman, Dr. Abdulfattah Shawqi

His eminence Sheikh Al-Salami is kindly asked to answer some questions.

Sheikh Al-Salami

There are some problems and issues that I cannot follow, so I'll limit my speech to two subjects because I find them seriously interrelated.

The first is the issue of sex change. This issue must be divided into two main lines the first of which is examination of sex, namely the process of determining what is known in the Islamic Sharia or by jurists by the term "hermaphrodite" and the hermaphrodite. — governing rulings. The hermaphrodite is a male or a female having the features of the other sex. Such a hermaphrodite is of eight types that were discussed by jurists.

There are also rulings that govern these types when they remain as they are and neither male nor female qualities are detectable. Such a hermaphrodite is termed "problematic hermaphrodite" (or Ambisexual). Therefore, hermaphrodite is of two kinds: problematic hermaphrodite and a hermaphrodite who can be identified as male or female, and no one can oppose the taking of appropriate measures intended to bring out the masculine qualities for a male and the feminine ones for a female. This is a decided conclusion.

The other question is sex change, which is attributable, as doctors

said, to psychological factors that, though they are not new, they have become common in this age as a result of failure to enforce Prescripts of Allah and to follow the Islamic Sharia and to abide by morals. This is a perversion. It is what the Messenger of Allah, may the blessings and peace of Allah be upon him. termed in Arabic as "effeminate person" indicating a person who, though a male, has a tendency to behave like women, namely he loves to talk, dress and adorn himself like women. The Prophet, forbade such effeminate persons calling on women because they are men, and an effeminate person, regardless of the psychological perversion he has, remains the same person. The Messenger, may the blessings of Allah be upon him, cursed women who assumed masculine manners, namely the ones who wanted to appear like men in everything, as he cursed the man who wanted to appear like women. It is necessary that a psychological force, which can overcome this tendency, should exist, I mean the inherent tendency for weakness, so that a person should behave in the manner of the original sex. This may be a question of upbringing and education. When, a mother, with a female child, gives birth to male children and fails to bring up one of them properly as by treating him like a female or calling him a female. let him wear his hair long and spoiling him, would such a child remain a male anymore? Neither medicine nor doctors can claim that such a person should have sex surgically changed because his mentality is that of a female, for this is conducive to disorder and confusion, what does confusion mean? We know that human societies differ in respect of habits and customs; in some societies the female is preferred especially when women are predominantly authoritative; the more powerful is the woman, in any given society or within a household, than the man, the more pleased or happier is the society or the family when a female is born. The family in France for instance, according to what I know, is happier with the birth of a female than when a male is born, whereas in our Arab and Muslim societies or in China a male is more welcome than a female. Therefore, if we made permissible changing of male qualities to female qualities or the other way round, the result will be nothing but complete disorder and confusion.

The third point is the consequences of this, namely the fact that Allah, glorified be He, specified legacy rights, social position for the male, and He also prescribed social position, rights and obligations for a female. Therefore, conversion of one sex to the other will lead to great disorder and confusion within the family; for when a man dies leaving a son then the son wants to change sex into female, then how could we deal with him? This is an aspect of the matter on which we can't heed what doctors should say or

the psychological disorders on which advocators of sex change base argument. Such argument is of no consequence here - sex change is impermissible. I affirm that it is categorically impermissible and that it is inadmissible for a Muslim doctor, Muslim man or Muslim woman to do it. The other subject I want to touch on is the question of the creation of Allah, as an Islamic Creed. What does this mean in the opinion of Sunna people, Ulama of the Hadith and the "ancestralist" (salafies)? It is that Allah created us and He created our acts. The creation, therefore, consists of two things, but the thing that is foreign to the creed is the misconception on the part of man that anything could take place in the universe without the Will of Allah. This is explained by the Hadith related by Al-Bukhari and which is also found in other Sahihs that the Messenger of Allah, was with his companions outside Al-Madina.

There were some marks of the rainfall during the night. The Messenger, may the blessings and peace of Allah be upon him, remarked.

> *"He (Allah) said: Some of my bondsmen entered the morning as My believers and some as unbelievers. He who said: We have had a rainfall due to the rising of such and such (star) disbelieved me and affirmed his faith in the stars, and he who said: We have had a rainfall due to the blessings and mercy of Allah, he is My believer and a disbeliever of stars".*

Therefore, our acts are part of the creation of Allah.

We must distinguish the question of the creation of Allah and the interference on the part of man by changing what is created by Allah though this would be no more than changing what Allah has created to acts that Allah has ordained. Is this interference admissible or not? I ask this question although I believe that anything the outcome of which would be deformation, corruption, cheating, concealment of a crime or sex change is undoubtedly impermisible. But if these are not what is intended by such interferences and are only for the purpose of demonstrating and bringing out the natural creation of man and in order to change deformities that blemish it into natural form, I'm inclined to safely say that there is nothing in my opinion that prohibits or prevents the doctor from doing that.

Dr. Abdulfattah Shawqui

Thank you very much...
Just one minute for His Eminence Sheikh Abdulrahman Abdulkhaliq.

Sheikh Abdulrahman Abdulkhaliq

First I thank Sheikh Al-Salami and Dr. Majid Tahboub for the concurrence of their opinion, a specialist doctor and a mufti, that interference for the purpose of changing sex is utterly inadmissible except in the case of the "problematic hermaphrodite" who has both male and female organs. This issue has become clear, and praise be to Allah for the doctor. Who practices this kind of operations, denounces this thing with his common sense as a Muslim. And thus the Sharia opinion and the medical standpoint have concurred about this question.

Sheikh Al-Salami has also spared me explanation of a question about the creed, namely the one concerning the limit between the act of man and the Act of Allah, highly glorified be He, for this is closely connected with the question of changing the creation of Allah, This in fact is somthing which I had to say, for the matter looked a bit mixed up in the speech of Dr. Naem Yaseen. He had, as he said, some simple writings on the question, but I hope that he'll follow up his studies about this issue for it is really a very serious one. There is a border-line between the Act of Allah and the act of man. The act of man is part of the general Act and Preordination of Allah. There is no doubt about this.

VEERILY EVERYTHING! WE HAVE CREATED IT BY A MEASURE.

Every act that takes place in the universe, as Sheikh Al-Salami said, is according to the Will of Allah. Yet what I mean is the act that represents violation of what Allah has created.. That is the act which is directly effected by Him such as the making of an embryo. This is an act that is directly done by Allah, Creation is a direct act of His.

O MAN! WHAT HATH BEGUILED THEE CONCERNING THE LORD, THE BOUNTIFUL, WHO CREATED THEE, THEN MOULDED THEE, THEN PROPORTIONED THEE? IN WHATSOEVER FORM HE LISTED HE CONSTRUCTED THEE. SO,

this is the creation of Allah, so mighty and glorified is He. Creation of Allah is what is directly effected by Him who creates just by commanding: Be, and it becometh. But as for the act of man, it is attributable to Allah's preordination as preordained but not as somthing created by Allah, highly glorified be He. This is only my act. It is true that whoever commits adultery, steals or disbelieves does this by Will of Allah; he doesn't do it in spite of Allah, rather he does it by His Will, Allah, highly glorified be He, has taught him, as He said:

AND HAD ALLAH WILLED, THEY HAD NOT ASSOCIATED.

Therefore, everything is by the Will of Allah and is preordained by Allah but is not created by Him. Adultery, stealing, drinking and the act of a doctor, all these are not creation of Allah but acts of man and he will be called to account for them and they are attributable to him.. so-and-so did such and such a thing, but we don't say: Allah did such and such a thing. We don't say Allah performed so and so for something that is an act of man, for act of man is attributed to him. Act of man can be good or evil. The Whole of our search is within the of area of the questions: what is good and what is evil for man? What is the part of plastic surgery that man is obligated by the Sharia to do, and what is the part that he should not do? what is that which is made permissible and impermissible by Allah for me in respect of this matter? If we do an act, we shouldn't say: this is permissible. But, to say this is a creation of Allah.. The matter is quite far from this if you did an act.. a plastic surgery operation.. All these are acts of man. They are either described as permissible, because Allah has made them permissible or impermissible. If there is direct violation of the original creation of Allah, and violation of the attribute of Allah, the Fashioner, and opposition to the creation a conception that Allah has not created that which is good, then this is undoubtedly impermissible.

There is yet only a small fleeting remark.. namely that Abdullah Ibn Mas'oud, may Allah be pleased with him, was not in fact deformed; he was a man who was born to be a mujahid, a fighter for the cause of Allah, he was one of the best of the companions; he took part in all the battles along with the Messenger of Allah, I understood from the speech of the doctor that he was invalid and crippled; on the contrary, he was one of the most active companions. But his case was similar to that of one who has talipes which is just a twist in the foot or in the leg.

As for what the Messenger said that

"anything that Allah has created is good"

being a remedy as well as guidance, for we shouldn't of course laugh at something that does not represent natural creation in man, yet this is also doubtful, for Allah, so mighty and glorified is He, may create a thing and its opposite to demonstrate the difference between this and that so that this should praise Allah, so mighty and glorified is He, and that should praise Him too.

Dr. Abdufattah Shawqi

Thank you very much... The author of the research, Dr. Muhammad

Othman Shabir, is going to conclude the session with a brief comment in time for Noon Prayers.

Dr. Muhammad Othman Shabir

With regard to the question submitted by Dr. Haitham Al-Khayyat, I think that I have answered it, that what was meant by "normal creation" was the normal form in which all people were created. Allah, created people in different forms and shapes. Thousands of people differ from the typical form of man. Every individual is different from another and this fact is useful for the science of establishing identity.

As for Dr. Hussain Al-Jazaeri and his question that when a woman's skin loses firmness and wrinkles appear on the face, is it admissible for her to have a face-lift? My answer is that sagging skin and wrinkles in this case are either due to a natural cause, namely old age, and in this case face-lift is inadmissible, or to an illness and here it is admissible.

As for Dr. Ibrahim Al-Sayyad and his question about a woman whose hair falls out as whether it is admissible to perform a plastic surgery operation on her? I say that artificial lengthening and tatooing must be distinguished, I detected the Hadiths pertaining to artificial lengthening and did not find the statement: "(the woman) who changes what Allah has created", therefore the reason for forbidding artificial lengthening is cheating and fraudulence. The Messenger, may the blessings and peace of Allah be upon him, forbade the woman who wanted to add false hair to her engaged daughter's head, lest her husband should be cheated. All the daughter's hair had fallen out and her would-be husband was urging her, namely he was anxious to wed her, when she was still engaged to him and marriage contract was already concluded but marriage was not yet consummated. Thereofore the reason for forbidding the adding of false hair in such a case is that a woman should not assume an appearance contrary to that of one whose hair has fallen out. So, the rationale behind forbidding artificial lengthening is fraudulence and cheating. Accordingly, a woman whose hair falls out due to a disease.. if she is as jurists explained then it is admissible for her to add false hair to her head or to have a hair transplant, for this means restoration of natural beauty and creation.

As for the question of the too big nose which was submitted by Dr. Hassan Hathout, I agree with him in that it is admissible to surgically change a big nose which is foreign to normal creation. I restricted my argument for inadmissibility of conducting such an operation to the case in, which the nose is not within normal creation, I mean the creation that is

normal for all people. In hospitals or plastic surgery clinics some cases are presented.. A woman with a considerably and abnormally prominent nose, which is deemed a defect by all people, came for a plastic surgery operation; She attracted the attention of all people who were present in that clinic. So, if the surgeon should intervene to restore the nose to normal creation, then there is no objection. But what I meant by the nose change that is inadmissible, is that which is done just for the sake of not liking the nose, as singers and actresses do and simply because the audience and the director want a specific nose. This is the change that is forbidden in the Sharia. But as to the nose that is notably big and which is flagrantly alien to normal creation, it is admissible to change and correct it, and Allah knows best.

Dr. Abdullfattah Shawqi.

Thanks for Dr. Muhammad Othman Shabir. He has simplified matters for the Drafting Committee. I say as Allah, highly glorified be He, said:

> *THOSE ONLY OF HIS BODMEN WHO HAVE KNOWLEDGE FEAR ALLAH.*

and I also say:

> *AND YE HAVE NOT BEEN VOUCHSAFED OF KNOWLEDGE SAVE A LITTLE.*

and I say: let's go to offer prayers, may Allah have mercy upon you.

Chairman, Sheikh Muhammad Al-Mokhtar Al-Salami.

Our Lord! in thee we put trust, and unto thee we turn, and unto thee is the journeying. Our Lord! show us the truth and guide us on its path.

Brothers, may the peace, mercy and blessings of Allah be upon you.

We continue our sessions in this blessed place, may God Bless those who made it and gathered us in this blessed meeting. In this session we are going to deal with two main topics: the first is "Fate of Fertilized ova" by Drs. Abdullah Basalmah and Ma'mum Al-Haj Ibrahim; and the second is "Sexual assault" to be presented by Dr. Muhammad Kamal Najeeb on behalf of Dr. Seddiqa Al-Awadi. Since we have less than an hour left to lunch, a maximum of 20 minutes is assigned to each lecturer otherwise you'd be harming the stomachs of the participants. Then we'll have a comment, and Dr. Hassan Al-Shazli and Sheikh Muhammad Al-Ghazali will comment on and respond to raised issues and questions and I may follow them then comments from the floor, Thank you.

Research by Dr. Abdullah Basalamah (Research Section page No. 407).

Sheikh M. A.Al-Salami

Thanks to Dr. Abdullah Basalamah for his clear meticulous accuracy, scientific serenity, and brevity may Allah Bless him. Now I give the floor to Dr. Ma'mun Al-Haj Ibrahim to continue presentation on the same topic.

Research by Dr. Ma'mun Al-Haj Ibrahim (Research Section Page No. 415).

Sheikh M. A.Al-Salami

Thanks to Dr. Ma'mun Al-Haj Ibrahim. He added new aspects to what we heard form Dr. Abdullah Basalamah. We now have two points of view: the first is to fertilize only the ova that will be implanted into the mother's uterus, and the second, which Dr. Ma'mun Al-Haj holds, is to use some of these fertilized ova for research. Now, since the scientific medical side of the issue is clear, I call upon Dr. Hassan Al-Shazli to comment and give the viewpoint of Islamic Jurisprudence.

Dr. Hassan Al-Shazli

This is a delicate, intricate and sensitive topic that deserves not mere commentary but we could have matched the medical researches with well-prepared Sharia researches covering this topic. However, since only commentary is requested, I'll serve all the related information that I have hoping that the following points will be of use in clarifying the issue under consideration.

For us in Islamic Jurisprudence, in the first place, and that's what I found more acceptable and recorded in a book published here in Kuwait, about the Embryo's Right to Life, as soon as a spermatozoon and an ovum are united the life of a human being starts and consequently start the stages of human life as the Munificient Qur'an relates them in the following Qur'anic verse:

> *AND ASSUREDLY CREATED MAN OF AN EXTRACT OF CLAY. THEREAFTER WE MADE HIM OF A SPERM IN A SAFE RECEPTACLE. THEREAFTER WE CREATED THE SPERM AS A CLOT; THEN WE CREATED THE CLOT AS A LUMP OF FLESH; THEN WE CREATED THE LUMP OF FLESH AS BONES; THEN WE CLOTHED THE BONES WITH FLESH; THEREAFTER WE BROUGHT HIM FORTH AS ANOTHER CREATURE! BLEST THEN BE ALLAH, THE BEST OF CREATORS.*

The Magnificent Qur'an says here that He created it and that it is sign of his power evidenced by this evolution - so an embryo is a creature. This verse, as you know, is in Surat Al-Mu'minun and this sura urges us to look deeply into this repetition of these stages of this creature to whom He subjected everything in the universe. As we know this, now this is my opinion of what was said, and I hope Sheikh Al-Salami will be patient with me; can we make an analogy between this life and the life before the spermatozoon and the ovum are united, like it was said that there is life in both cases? I say, "No". The earlier life existing in the spermatozoon and in the ovum, as we all know, ends if they do not get united. So the two cases are different and analogy cannot be made here. So we must differentiate between the pre-fertilization life and post-fertilization during which we request "it". It was also said that the movement of the embryo proves "its" life. And here I also say, "No". Science has proved the evolution of embryo and it was presented in this organization; the embryo is alive from the very beginning of "its" evolution - this has already been proved.

To go back to the issue of fertilize ovum, I'd like to say that we know that there may be a necessity. The issue has been raised in various communities, and it was that if there is a necessity, then there is no objection on certain conditions and the conditions are: it shall be limited to husband and wife; it shall be performed under adequate medical care and by Muslim doctors; etc., in order to ensure that nothing undesirable - nothing that doesn't belong to husband and wife, will leak into this place. This practice requires. So if we establish that there is a necessity, an infertile woman or a sterile man for example, or any of the cases in which a woman cannot conceive as presented by the doctors, then we have two choices, either to take a large as said, and have surplus or to take a large number as said and have surplus or to take exactly what we're going to put back. The second choice is of course safe. Having a surplus is something very hazardous because of the possible said uses of the ova. I hope this will never happen - to experiment on fertilized ova, because using man at the very beginning of his life in such a way would be a degradation of him against the reverence that Allah bestowed upon him. Also, freezing the fertilized ova and keeping them for a long time involves other hazards like leaking them or mixing them with other people's. Caring fully for man Islam prohibits this. If there have to be experiments, they shouldn't be on human life. I hope this will be enough for our virtuous professors.

Sheikh M. A. Al-Salami

Thanks to Dr. Hassan Al-Shazli for this clear explanation I now give the floor to Sheikh Muhammad Al-Ghazali for we'd like to hear the Sharia point of view in this medically controversial issue.

Sheikh Muhammad Al-Ghazali

I didn't know in advance that I'll be called upon, or I would have brought with me two documents that I've kept for sometime. I have clippings from the UNESCO journal issued this year. The doctors would know this, I am only an outsider, but what I read really disturbed me; it said that an embryo may grow in either sex independently, a man may get pregnant and deliver independently. Then I read on the science page of Al-Ahram, another document, that a woman may get pregnant independently - she doesn't need a man. This made me wonder, should'nt there be a path controlled by relegion for scientific activities? scientific activities should not be left to whims or they could deviate from the ideals prescribed be religion for humanity. The marriage bond is not like animal husbandry, it is for the bringing up of men and women as good human beings controlled by definite specific codes of ethics and anything contrary to this must be prohibited. Consequently the issue of fertilizing an ovum with a man's sperm, if done between husband and wife. Jurists have agreed that it is permissible. In this case, of course, the expression "test-tube baby" is used figuratively. It is a rather defiant expression because neither sperm nor ova are man-made; they are both secreted in the woman's uterus and after 12 or 13 hours the embryo starts the nine month cycle during which it grows as Allah's creation. We must specify what happens to the surplus ova, I believe they must be destroyed after the needed ones have been taken for the insemination following the first menstruation: the second menstruation is completely independent. After the relation between man and wife is completed, and reproduction happens, the surplus must not be kept. We are not inseminating animals here, artificial insemination is done to increase the population of cows or chiken. Yes, but we're dealing here with as lineage of ancestors, a family to grow up in and a social and ethical background. We must clip the wings of further ambitions because humanity is humanity, and destroying the surplus ova and sperm is not an aggression on humanity, it is a protective measure to keep it up at a respectable level. There's a difference between a completely built-up human being and a human being still in the very early stages of formation. If what is formed at the beginning of man's formation could be called a human being, there wouldn't have been an idemnity for causing abortion so long

as the embryo is not mature. Aggression on a human being is punished by law of parity and a full blood money would be applicable. So indemnity for causing abortion means that the embryo is only human-like or is on its way to becoming human. So if it's still in the early stages of the way, destroying these spermatozoa, ova or tissues will be rather beneficial. For getting rid of them would keep the natural human being within the natural sphere. This is my opinion on this issue and "Allah" knows best.

Chairman, Sheikh M. A. Al-Salami

Thank you Sheikh Ghazali. I call upon Dr. Abdulsatar Abu-Ghudda to give us a jurisprudence point of view on the same issue.

Dr. Abdulsatar Abu-Ghudda

I'd like to add to the two eminent Sheikhs, Dr. Hassan and H.E. Sheikh Ghazali, have said that this issue was discussed in the first symposium of the organization which discussed in the first symposium of the organization which discussed questions on abortion and all related issues and various viewpoints were presented. However, we're now confronted with the specific question that Dr. Ma'mun insists on having answered, though, the question doesn't need just an answer as much as it needs research to collect the various jurisprudence viewpoints on that issue in particular. Nevertheless I'll add a few sharia points to what has already been said.

The two esteemed articles have dealt with the issue medically and also contained a lot of controversial Sharia points which we can't, under the present limitations, discuss one by one; they need to be dealt within detailed written jurisprudence researches. However, I'd like to say that exaggerating the sanctity of fertilized ova opens the door for a lot hardships and controversy for people because nothing has been found from jurists or in the Sharia texts that matches this exaggeration in caring for this water which the Munificent Qur'an call "water despicable" and which is nothing but an unworthy trifle because it still got to go through other stages before any of the provisions related to embryo or abortion could be considered applicable. Foe we have to consider this issue in the light of the provisions for embryo and abortion. There are many provisions in the Islamic Sharia related to embryo and abortion, not only actions to be taken, but also for the consequent issues of purity, impurity, period of retreat before a woman remarries, will, etc. When jurists spoke of the provisions for embryo and abortion they put a lot of controls for these provisions to be applicable and

not one of them mentioned when the spermatozoon and the "breathing of spirit"; some made it conditional upon assuming the shape of a creature and taking a human form; and some made it conditional upon its condition after delivery, i.e. if it starts crying or moves even if it doesn't cry; but there's no mention of the united spermatozoon and ovum.

Let's go back now to the definition of embryo. In Arabic embryo is *"janeen"* which is derived from *"ijtenan"* which means "being veiled". However, in Sharia, jurists used the word figuratively and called the pregnancy from its very first stage *"janeen"*, embryo. However, I found clear cut texts to the effect that the use of the word in this sense is figurative. The Shafitic Jurists and Al-Mazni, in particular, quote Iman Shafii as saying that the word *"janeen"* should not really be used until after the stage of "lump of flesh" and that the use of the word for earlier stages is only figurative. In Al-Omm Imam Shafii says "The earliest to be considered an embryo, *"janeen"*, is when it is past the "clot" and the "lump of flesh" and starts to assume something of human shape."

However in order to provide exact answers to this question and the others raised by the two researches, I suggest we include them in the questions to be studied by Fiqh ad hoc committee which was suggested in the sessions of the first day. This committee will be able to study these two researches employing adequate specialized expertise. If I'm to point out some of the Sharia points that came in the research contrary to fact, I'll mention the reference that if the abortion delivered a dead embryo then a full blood money is payable, I'm not sure in which of the researches this occured, but no one of the jurists said so. If the embryo is aborted dead only indemnity for causing abortion, which is half 1/10 of bloodmoney is payable, not a full bloodmoney. However if it was aborted alive, and life was evident; though the evidence of life is disputable between jurists as to whether it is crying or movement, then blood money is definitely payable because it is evidenced that it was alive then died. I'm not going to carry on any further because I believe this issue needs jurisprudence researches. This question has entrusted the jurists with a duty to perform in order to attain balance between medical researches and those of the Sharia.

Sheikh M. A. Al-Salami

Thanks to H. E. Dr. A. Abu-Ghudda. Allow me now, not as Chairman but as a jurist to participate in the discussion. I believe the question under discussion is a sensitive one because it raises a new issue. We have already agreed on the permissibility of insemination whether outside or in-

side the uterus as long as it is between husband and wife in the existence of marriage, provided the necessary protective measures are taken. However, this stirred a new problem for the doctors because in order to achieve a higher ratio of success they need to fertilize more than one ovum and then when pregnancy occurs they'll still have a surplus of fertilized ova so what should they do with them? We heard two solutions, the first is Dr. Basalamah's which is to implant them back into the mothers uterus, though he didn't say anything about the surplus. The second solution is Dr. Ma'amun's who believes they could be used in two ways: the first is to return them to the mother's uterus to grow and produce a human being, and the second is to use them in scientific experiments that would be beneficial for the whole of humanity.

I believe the study of the issue should not start at the idemnity money for inducing abortion of pregnancy. We should start by examining the *"halal"* and *"haram"* aspects of the issue; is it permissible for anybody to cause a mother who is pregnant at the very early stages of embryo formation to be aborted, is that embryo inviolable or not? I believe that the first meeting concluded that the embryo is sanctified from the very first day. Imam Shafii, may Allah bless him, based his individual judgement on the findings of science of his age, but today we are absolutely sure that when the ovum is fertilized with sperm it will have all the traits of a human being, though minute it gradually grows and takes shape until it's fully mature after 40 years.!!

Therefore, my opinion is that the ovum has its special inviolability which is not up to the level of inviolability of a completely developed human being and it's not "water despicable" either, because the "water despicable" mentioned in the Qur'an is the man's "water" prior to fertilization; but once fertilization occurs it's no longer "water despicable". The divine wisdom, or the Qur'anic precision, and Allah is the mightly, He made what is created be attributed to the man on the grounds that the characteristics related to creation always come from the man as I think, and of course I may stand corrected in this if what I understood from them is not correct. The question, first of all, is one of permissibility and inviolability of the embryo from the first day, being an embryo. Fertilization should be limited to the number of ova that will be implanted - one, two or three; I'm not telling the doctor how many to fertilize, but the ova fertilized must be implanted at one time because of the hazards involved in keeping them until a new menstrual period occurs. Can we guarantee that the woman will live until another menstrual period occurs, then get purified and then the ova get implanted? Aggression on these ova, in my opinion, is an

aggression on a human life which is still in the very first stage.

What I also got to know through following the recent developments is that the European Council has passed certain decisions regarding this issue, i.e. artificial insemination, among other decisions, prohibiting the use of fertilized ova in scientific research or that these ova be used for the formation of tissues to be transplanted to other people for certain reasons. The European parliamentary Council recommended that all this should not be done. Thus, I believe that the honour bestowed on man is effective the first day of his creation.

Dr. Hassan Al-Shazli

Just to clarify: there is a point raised by Dr. Abdulsattar that there is no Sharia provision that life of embryo starts at the time the fertilized ovum gets attached to the uterine lining. We're positive that as soon as the attachment occurs the Sharia provisions are effective, to the effect that we allocate its share of inheritance, and according to some schools, if included in a will, we deliver what is allocated for him at birth. It is established that once it is evident that there is an embryo attached to the uterus all rights are reserved for it; this is a Sharia provision which proves that we give the embryo all due importance since the first moment. This is the first point. The second point: he said that none of the jurists said that blood money is payable for embryo. In fact, there are three opinions: the first which is held by the majority of jurists that it is only indemnity for causing abortion from the first day of pregnancy to the last day of term. The second which is, held by the Zahirites is that once the first 120 days are completed spirit is breathed into it, so if there is any aggression after that the law of parity is applicable is full blood-money is paid and before that only abortion indemnity is applicable; the proof being the Hadith of the Messeger, may the blessings and peace of allah be upon him, in which he tells that spirit is breathed into embyro at this time. The third opinion does not apply the law of Parity because of the uncertainty due to its being hidden and veiled, so a full blood money is payable; this is the opinion held by the Imamites and the Abadhites. Thus we have three opinions: the Sunnites have two opinions- the Zahirites have one and the others have one, and there are three opinions all in all.

The third point is the issue of destroying the fertilized ova. I would say that as long as it is possible, as presented by the two doctors, to take only the needed ova and avoid this trap, and it was possible to take one or two ova, then fertilize them, without having to destroy fertilized ova.

Dr. Hassan Hathout

I'll go past what has been agreed on: and the question now is what to do with the surplus fertilized ova. The answer is that they shouldn't exist originally, that is to say, if the doctor finds that the suitable number of fertilized ova to be implanted in the uterus is three then he shouldn't expose any more than three unfertilized ova to insemination, they may all get inseminated or may be none so we then try again in repeated cycles following the same technique until we get one, two or three ova fertilized. This of course will exhaust more effort, time and money, but I heard Sheikh Salami say that effort, time and money are less inviolable than human life. So we have to explain to be patients and say if we don't want to have surplus ova that we don't know what to do with; but killing them when we have got them is prohibited because we'll be killing a human being in its first stage of life; prevention is better than killing.

A question was raised about when life begins. I do respect all the deductions in the books of Fiqh about the beginning of life the closest of which to being correct is probably what Al-Ghazali said of life being two lives, an apparent one and a hidden one. The apparent is the one that the mother feels in the movement of the embryo and which coincides with the breathing of spirit. However, it is known that the spirit is breathed into something alive not dead and that life exists from the beginning and the beginning is the unification of the two halves to form one whole. I'would like to point out here, scientifically as a specialist in the field, that life passes through stages, and the one stage of life creation that can be pointed out as the beginning of life is the stage that includes the following five characteristics: first, to be an apparent identifiable stage, apparent beginning, clear not mysterious and not gradual; second, that one can recognize the characteristic of life, i.e. growth; third, if growth is not interrupted; it will lead to the known subsequert stages, fourth, which is more important, for it to contain the genetic content which distinguishes the human race in general and provides each human being with his particular characteristics and traits that have never been repeated nor will ever be; fifth, that this stage is unpercedented by any stage fulfilling these four criteria. If it is said that sperm moves. we'll say but they don't carry the genes of a human being or a person and that they won't grow and that they won't develop into further stage. I respect what the predecessors said, for they based it on the medicine of their age, and our deductions must be based on the medicine of our age best.

Chairman, Sheikh M. A.Al-Salami

Thanks to Dr. Hathout, though he didn't conclude his talk with a result After these five characteristics what's your opinion of the fertilized ova?

Dr. H. Hathout

My opinion is that they shouldn't exist originally, we shouldn't get to the point of having them. The scientific solution is probably to further the scientific research to become able to freeze unfertilized ova apart from sperm and then withdraw from the bank once, twice or thrice, nothing more.

Dr. Omar Sulaiman Al-Ashqar

In fact, I don't want to speak. It seems that the question I wanted to ask has been answered by Dr. Hathout. The second question: I gathered from the two researches that the problem lies in the fertilized ova not the unfertilized ones: is there a problem in taking say 10 ova, so that if we have two, three or four faulty ones, we use the rest?

In there a possibility in the future to freeze these ova unfertilized until needed for use?

Dr. A. Basalamah

With your permission, Mr. Chairman, may I add to Dr. Omar's question, first, a faulty ovum is found faulty after fertilization, when you examine it you see that it was penetrated by two spermatozoa, this ovum does not produce an embryo, it would produce a vesicular mole that would develop into a malignant tumor.

Second, means of Cryo-preservation are still under experimentation and experiments on animals proved that freezing then heating makes the ova more penetrable by more than one spermatozoan. What I would like to mention again is that the fertilized ovum, from the point of view of cell-formation is definitely not the embryo. Only a little part of it develops into the embryo on the tenth day after getting attached to the uterine wall, and that might not happen if it turns out to be a faulty ovum that might produce a vesicular mole or twins. I don't want to speak about these now.

Dr. Salah Al-Ateeqi

The word killing came up just a while ago in Dr. Hathout's speech. I

just wonder, you allowed abortion in the first few months when necessary, so what happened to us to consider fertilized ova in their very first days to have a special sanctity? I believe that whatever applies to abortion applies also to these ova.

Sheikh, M. A. Al-Salami

This emphasizes what we have concluded: that embryo, whether inside or outside the uterus is inviolable and that abortion is impermissible unless there are true reasons necessitating it. Now, we have exceeded the time allotted for this session and the issue is rather sensitive, so we will continue discussions in the evening session, God wills. The Recommendation Committee is requested to meet right after lunch. Thank you and may the peace and Mercy of Allah be upon you. Session adjourned.

Chairman, Dr. Muhammad Sayed Tantawi

To begin, with the praise of Allah I call the third session open.

Dr. Omer Al-Ashqar will present his research on "Menses, Puerperium and Pregnancy: Minimum and Maximum periods". Presentation of Research by Dr. O.Al-Ashqar. (Research Section Page No. 493).

Chairman, Dr. M.S. Tantawi.

Thank you Dr. Omar Al-Ashqar. In this research His Eminence spoke about definitions of menstruation and puerperium; the miniumum and maximum periods of preganancy and puerperium, the evidence of each group and definite conclusions; the age of menarche and menopause; bleeding during pregnancy and the minimum and maximum periods of pregnancy. His Eminence, as we observed, requested doctors, more than once, to present their opinions on these Fiqh issues. However, it's probably more beneficial to listen first to the presentation of another paper by Dr. Nabiha Al-Gayyar on "Menstruation, Puerperium & Pregnancy: Miniumum & Maximum Periods", then we'll discuss questions. Presentation of research by Dr. N.M. Al-Gayyar (Research Section Page No. 400).

Dr. M. S. Tantawi

Thanks to Dr. N. Al-Gayyar. We have, probably, noticed that the first research of Dr. O. Al-Ashqar clearly concentrated on the Fiqh aspects while this research of Dr. N. Al-Gayyar centers on medical aspects. We now have the third research to be presented by Dr. Muhammad Kamal

Nageeb on "Sexual Assault". It is probably better to postpone this presentation till after the debate on these two researches since the two are so evidently related. First, H.E. Dr. M. Al-Ashqar.

Dr. M. A. Al-Ashqar

I will add a few questions to Sheikh Omar's. First, can medicine differentiate between menstrual bleeding, puerperium bleeding and other bleeding by laboratory examination? In other words if a woman is not sure of the cause of bleeding whether it is menstruation, puerperium or a disease, can the doctor by laboratory testing decide which is which?

Chairman, Dr. M.S. Tantawi

Let us answer questions one by one, this may be better. It is the doctors turn to answer, would any of the doctors care to answer the question raised by H.E. Dr. Al-Ashqar?

Dr. N. Al-Gayyar

It is not possible to differentiate between menstrual bleeding and disease bleeding because the source and formation are the same in both cases. However, it is possible to differentiate between them by clinical examination, study of case history and elimination of possibilities: pregnancy, disease, etc.

Dr. Omar S.Al-Ashqar

The second question is: the complete cycle of purity and menstruation is important in fiqh and law for the calculation of a woman's waiting period. For example, if a man divorces his wife and after one month she comes saying that her waiting period during which she cannot remarry is over in order to get married. Is this plausible? Can the woman's waiting period, i.e. the *idda* expire in one month, though the period is not enough? some jurists said that the miniumum is one month and some said 60 days. If this is possible the woman would be telling the truth otherwise she wouldn't. some jurists said that the minimum period of menstruation is a day and a night + 13 days of purity, 14 days all in all for a complete cycle + 13 days another complete cycle = 26 day + the day of the third menstruation = 27. Is this plausible, a complete cycle in 14 days? The doctor said that the uterus gets engorged with blood then the blood is discharged, then it starts all anew. The question now to the virtuous doctor is: you mentioned approximate periods, we need to know the rare cases because these are

the ones on which law is based or, the most plausible of the rare cases because a woman may claim that she is a rare case; like a woman whose husband died and after four years she comes saying that she was impregnated by her husband who died; is that plausible?

Dr. Hassan Hathout.

I believe there are two questions so far. The minimum period of menstrual cycle, by menstrual cycle we mean that a woman ovulates in the middle of the cycle, if the ovum is fertilized there won't be a menstruation, and if not the menstruation comes- there are 14 days between ovulation and menstruation, this is indisputable. This is the second half of the menstrual cycle. During the first half, the lining of the uterus is fragmented and discharged accompanied by blood and fragmented tissue and the minumum peirod of this process may vary from a few minutes to a few days, then the uterus starts healing and a new ovum starts growing until it's mature, then it is released and this is what is called ovulation; this can't happen in two days: bleeding, healing, the growth of the ovary until it releases the ovum- all this can't happen in two days.

Therefore, if there's a woman who menstruates every 16 days, this is not a normal menstrual cycle but some bleeding that occurs every 16 days, not the natural menstruation.

The question of the woman whose husband dies and after 4 years she gives birth. Let's consider a simpler case first; a married woman who says she is giving birth after 4 years of pregnancy. Menstruation may cease due to causes other than pregnancy; these causes are too many, pregnancy is only one. It is well known that some women don't menstruate while breast feeding, and some of them breast feed their babies for a long time- a year or two without a single menstruation- they stay pure. There may also be other causes like a brain tumor that secretes a certain hormone causing the menstrual cycle to cease. In such cases the woman will stay without menstruation for months of years until the cause is eliminated then she starts ovulating anew. If it happens that the first ovum ovulated gets fertilized, the woman gets pregnant, and by then she has spent 4 years without menstruation and there was no pregnancy either, then the pregnancy began, took its 9-month term and then she delivered. As this case appears, the woman stayed for 5 years without menstruation then she delivered. so it seems as if the pregnancy lasted for 4 years, but of course the truth is that the woman was not menstruating, ovulating, or capable of getting pregnant for the four years then the ovum that Allah bes-

towed upon her got fertilized so pregnancy occurred. So four years of the five were out of the pregnancy. she wasn't pregnant for those 5 years- and only one year or less than a year is the period of pregnancy followed by delivery.

Now, the woman that says that her husband died and she delivered after four years - this is impossible, to the best of my knowledge. If she had been pregnant for 4 years the baby must have been delivered with teeth and long hair; for it is a fetus that grows everyday and what makes it grow is the nourishment it gets through the placenta attached to the suterus wall which extracts nutrients from the mother's blood system for the fetus to feed, breathe and grow. A placenta that serves for four years has not been witnessed yet, and it is impossible. so that is somthing that can't be scientifically explained, like the girl who was pregnant and claimed that she got pregnant without having any sexual intercourse and asked why Virgin Mary got pregnant without a father for the baby, this too is out of sicentific explanation, Causes of such cases are mostly the same causes of an unmarried woman's pregnancy.

Chairman, Dr. M.S. Tantawi

Thanks to Dr. H.Hathout for this satisfying answer. It is surely one of the blessings of meetings between jurists and doctors that such valuable information which we probably hear for the first time. This shows that we need to hold such meetings from time to time, and learning, as the saying goes, makes a man fit company for himself (and definitely for others). Any other questions on this issue?

Dr. M.S. Al-Ashqar

One last question, If I may, to Dr. Omar, about the Hadith: he mentioned that Um-Salma said that the Prophet may the blessings and peace of Allah be upon him, had women who would stay 40 days in puerperium. It is known that while in Medina, the Prophet, had no children born except what was said that Aisha aborted, and none of all his women gave birth; that is well known. So how could it be that a woman of the Prophet stayed such or such a period?

Sheikh Omar S. Al-Ashqar.

Jurists mentioned this problem; commentators on the Hadith included it and said that "women of the Messenger's, may the blessings and peace

of Allah be upon him", doesn't necessarily mean wives of the Messenger, for a man's women could be his sisters, parent and aunts, and other relatives -these are all his women.

Dr. Yehia Nasser Khawaji.

Regarding menstrual and inter-menstrual bleedings, the fellow doctor says we can't differentiate between them while jurists can; the menstrual bleeding is dark in colour which is different from the inter-menstrual bleeding. Gynecologists and obstetricians didn't study the menstual and the intermenstrual bleedings in order to be able to differentiate between them. In fact, it is very clear that there's a difference between menstrual and inter-menstrual bleedings, and jurists know that difference very well; they are, in this case, a better authority than gynecologists and obstetricians; I'm sorry to say that.

Dr. Nabiha Al-Gayyar

There may be a little difference but not in colour and shape. There's a minute chemical difference like an increase in certain enzymes, but we don't normally run such lab tests to differentiate between menstrual, inter-menstrual and other types of bleeding. We never resort to such acute analyses as, for example, the existence of some type of fermentation in the menstrual discharge. However it is possible to apply the colour and shape criteria; the menstrual bleeding is not clotted, but if the bleeding is excessive it becomes clotted; nevertheless the formation of blood shed is the same in all cases.

Chairman, Dr. M.S. Tantawi.

Dr. Hassan wants to comment.

Dr. H. Hathout

Menstrual and intermenstrual, these are rather Fiqh expressions because if anything happens to the endometrium that causes bleeding, and persists so that bleeding continues for 1, 2, 3, 4, 5, 6 and 7 and even 8 days, some jurists tell the woman that if her regular menstrual period is six days, count 6 days and consider whatever comes after that intermenstrual bleeding though it comes from the same source, for the same reason and of the same form. Anyway. Dr. Yehia, when I have a case where I can't tell whether it is menstrual or intermenstrual bleeding, I'll refer the woman to you.

Chairman, Dr. M.S. Tantawi

To be more organized, let's begin with this side then the other.

Dr. Essam Al-Sherbini

I have a comment on the Hadith that Dr. Omar mentioned: the Messenger, may the blessings and peace of Allah be upon him, said that bleeding during the regular number of days as woman is used to is considered menstruation and any excess is considered inter-menstrual bleeding; or should she not pray until the bleeding stops? If we were to apply the colour and shape criteria, it would have been mentioned in the Hadith.

Chairman, Dr. M. S. Tantawi

Any other questions? Dr. Kamal Fahmi, the floor is yours.

Dr. K. Fahmi

Differentiation between menstrual and intermenstrual bleeding by comparing colours, as Sheikh Yehia said, is impossible first because the degree of blood colour being dark or light depends on the quantity of blood shed from the uterine wall; if the menstrual bleeding is little the blood shed will be dark in colour but if the bleeding is excessive the colour will be deep red; and the same rule applies to inter-menstrual bleeding: if the cause is not serious and consequently the blood is little the colour will be dark, and when it is excessive the colour will be light. Second, there are other differences, as Dr. Salonas said, that need complex analyses in the laboratory: menstrual bleeding may contain a lot of cells because parts of the endometrium itself are discharged with the blood, but resorting to such analyses is not easy. Colour and quantity are inadequate criteria to differentiate between menstrual and intermenstrual bleeding. I believe that what Dr. Hassan said is the criteria: the number of days of the regular menstrual period.

Chairman, Dr. M.S. Tantawi

Any other questions or queries from this side as well?

Dr. Nabil Qurashi

In fact, I'd like to comment on the issue raised by both Dr. Yehia and Sheikh Al-Ashqar, namely the difference between menstrual and inter-

menstrual bleeding. In fact, this is an exhausting problem for us, doctors of the family clinic, because we deal with some gynaecology and obstetrics cases. The problem that we face in the case of a mother who is breast feeding is that sometimes the doctor has to prescribe the contraceptive pills which contain progestogen; in this case the woman would not be menstruating after delivery, and as a side effect of the pills she bleeds; the bleeding may be menstrual or inter-menstrual and we can't tell because of the pills' effect; the intermenstural bleeding may last for a long time. So I used to ask professors of gynecology and obstetrics, but I always got a negative answer. On this issue depend a lot of Shaira provisions, like the rituals, pilgrimage sometimes, fasting sometimes: should the woman fast or not, is it menstrual or inter-menstrual bleeding? As long as the issue is related to Islamic and Sharia issues and worship then we should conduct research in this field to find the truth. The question raised by Sheikh Al-Ashqar was whether there were laboratory tests or not. Dr. Yehia offended gynaecologists and obstetricians, and I belong to them because I work in the field of family medicine so in defending them, I'd like to say that the question was not about the shape and colour, it was about lab testing. We know that there's a difference. Dr. Nabiha mentioned hormones, fermentation and enzymes, so we can differentiate between the two types of bleeding. Since the issue is related to worship and legislation, why doesn't this gathering back up and encourage the proposal of starting scientific research on the differences between menstrual and inter-menstrual bleeding? For such a research may lead to a discovery of a certain possible examination that would spare the women not fasting for 10 or 7 days unrighteously.

Chairman, Dr. M. S. Tantawi

Thanks Dr. Nabil. I believe that this proposal, is worth considering and I suggest that the Drafting Committee forms an ad hoc committee, for this purpose, from jurists and doctors. If the doctors have anything new to discuss it will be beneficial even if they have just one jurist to consult in problematic areas.

Dr. Omar Al-Ashqar

I raised four issues, besides the questions to the end of the research: I suppose doctors will deal with those four questions.

Chairman, Dr. M.S.Tantawi

Thank you for that. Any other questions?

Dr. Najm A. Abdulwahid

In fact I'd like to tackle the issue from the very beginning, i.e. the questions that Sheikh Omar raised at the beginning because there are, in fact, a number of noteworthy points that need to be focused upon. Questions have been raised about the minimum and maximum periods of menstruation, the menstrual cycle, the earliest age at which menarche occurs and menopause, etc. In fact, unfortunately, I didn't at the beginning expect such questions to be raised otherwise we could have easily prepared some statistics because through my practice as a endocrinologist I have examined many cases, over 250 so far. So I can get exact data from the women I examined and thus we can tell exactly the minimum and maximum periods of menstruation depending on accurate scientific statistics. So, I can answer this question later, if it is possible to forward the answer to you which will include accurate sound statistics of our country. Unfortunately, all the statistics that we doctors have, even, those presented earlier by Dr. Nabiha Al-Gayyar, are western and may be different from our domestic statistics or those of other Muslim countries. We can get you exact figures regarding, in particular, the minimum and maximum periods of menstruation, the duration of menstrual cycle, the age of menarch and the age of menopause.

As for the point of precocious puberty which Dr. Nabiha mentioned, such cases are, in fact, rare. We see many of these cases as specialists but they're rare at large.

We can still provide statistics of the little number we have showing the age. As Dr. Nabiha mentioned, the first case on record was that of a 5-year old girl who got pregnant, that's true. In fact, in Kuwait I've witnessed one case only of a little girl who got pregnant, that's right; and that case that was recorded in Argentina. But these cases as I have menstioned are only rare while the question Dr. Omar raised, is concerned with the majority of our women here and that we can provide statistics on, quite easily with God's will, but it takes time to prepare such statistics. As for the minimum period of pregnancy. I believe Dr. Nabiha has answered this question and I confirm her answer that it is six months -that's scientifically indisputable because now with the progress achieved in modern scientific equipment it's become possible to preserve the lives of premature babies weighing 500 grms or more. This is absolutely true because I've seen such babies

myself in Britain who could live out six months even though they weighed that little. The maximum period of pregnancy, I believe Prof. Dr. Hassan Hathout has already given an answer, and the answer is, in my opinion, fullly satisfactory because cessation of menstruation doesn't necessarily indicate pregnancy. He mentioned normal causes of menstruation cessation like breast feeding; I can also add some abnormal causes like ovarian cysts which lead to malfunctioning of the ovaries causing the delay of ovulation for periods as long as months or years. So I agree with Prof. Dr. Hassan that the maximum period of menstruation cessation may be very long based on this hypothesis. This is not in fact pregnancy but cessation of ovulation and when pregnancy occurs it will take the right term that Dr. Nabiha mentioned; I believe her statistics are reliable, and the same applies to the period of puerperium. Now the interesting talk about menstrual, intermenstrual and puerperal bleeding; I'm still convinced, and I discussed it with Dr. Ma'mun and he got convinced too, that we can't differentiate between them, this is a fact that we should acknowledge. We can't identify the formation of any of these types of bleeding through the regular techniques known to us now. However, there's no harm in researching to study the formation of each of these types because I know a certain hormone, namely, prostaglandin, which is no doubt what triggers menstrual bleeding, it causes the uterus to contract to discharge the menstrual bleeding; so I'd suppose the menstrual discharge would contain a high level of this hormone while in the case of intermenstrual bleeding the level of this hormone should be low. This is a point that can be looked into among other points to be studied and researched.

Chairman, Dr. M.S. Tantawi

Thanks, Dr. Najm. I give the floor now to Dr. Yehia Nasser Khawaji.

Dr. Yehia Nasser Khawaji.

Dr. Hassan, as it is said in English you have missed the point. The main aim is not to differentiate between menstural and intermenstrual bleeding by the naked eye. What I've always wanted is for the gynecologists and obstetricians to study menstrual, inter-menstrual and puerperal bleeding so that if a woman says that after thirty days the puerperal bleeding stopped and two or three days later she started bleeding anew asked whether this new bleeding is a continuation of the puerperal bleeding or a disease bleeding, a gynecologist should be able to take a specimen and by examination tell whether the bleeding is caused by a cut in the uterus or is not actually puerperal so that the woman may fast; this is what I meant.

The colour is the jurists' problem not' the gynecologists or the obstetricians'. What I'm after is a study on menstrual bleeding that would actually allow doctors to identify whether the bleeding is menstrual or inter-mentrual since inter-menstrual bleeding is caused by certain cells.

Chairman, Dr. M.S. Tantawi.

Thanks, Dr. Yehia Nasser Khawaji.

Sheikh, Ezzuddeen Al-Khateeb

Thank you sir.

The jurists have their viewpoint in the issue of identifying menstrual and inter-menstrual bleeding; they also have their differences regarding the number of days menstrual period takes: some made it a day and a night and some made it three days, some mase its maximum, 15 days and some made it 10 days.

This is a clear evidence that there isn't always a clear-cut criteria to differentiate between menstrual and inter-menstrual bleeding; it depends on every woman's special regular menstrual period. There isn't such a general rule that applies to all women regarding the duration of menstrual or inter-menstrual bleeding. Jurists differentiated between menstrual and inter-menstrual bleeding in a way: they said that menstrual bleeding is the bleeding a women is used to have every month and which occurs when the capillaries which were prepared to receive an embryo or an ovum blow up. When jurists looked into this matter, they didn't research it medically, they researched it in connection to faith. Allah, highly exalted be He, says:

> *AND HATH NOT PLACED UPON YOU ANY NARROWNESS IN THE RELIGION.*

If we consider any blood shed by women menstruation, they will consequently miss a lot of merit, reciting Qur'an, fasting and offering prayer; they'll be deprived of worshipping God.

Therefore, jurists said that menstrual bleeding is the woman's regular menstruation pattern, and a woman usually has a specific regular period of six days, so after that she should have a major ablution then pray, fast and worship Allah. Jurists didn't deprive women of worshipping and approaching Allah. As the doctor contradicts the lady doctors, I'd like to tell him that they know what they're talking about better. It's true that the jurists defined the colour of the menstrual blood in the beginning of men-

struation in the middle and in the end, but they didn't define all that until they have consulted women.

Consellor, Abdullah Al-Issa

The question is, in fact, directed to doctors, they say that the menstrual bleeding is fragmentation of the endometrium that takes the unfertilized ovum with it. Now, based on this information can we medically consider one menstruation evidence of a pregnancy-free uterus?

Chairman, Dr. M. S. Tantawi

Who of the Doctors would like to answer that?
Dr. H.Hathout.

Dr. H. Hathout

One menstrual period is not enough evidence of pregnancy-free uterus. I'd like to make a little correction here: doctors didn't say that "menstrual bleeding is fragmentation of the endometrium that takes the unfertilized ovum with it, "none of us has said so. If the ovum doesn't get fertilized, the endometrium becomes of no use; it has been building itself up to receive an expected embryo or fertilized ovum, so when that is no longer expected the level of hormones goes down so it collapses. The unfertilized ovum may and may not be discharged with it; it may get lost in the woman's abdomen, shrink and get absorbed, there's nothing to control it. However, it is known that a woman may be pregnant, thus in case of a threatened aboprtion there will be some bleeding and if the case doesn't develop to an inevitable abortion, the pregnancy continues; then she might have another episode of threatened abortion and consequent bleeding, but the bleeding stops and pregnancy continues. Thus, blood discharge one time after another may occur from a pregnant uterus, so it is not enough proof that the uterus is pregnancy-free, and that may be the reason why a woman should wait until she had three menstruations because after three times of bleeding either the bleeding stops or... The doctor diagnoses pregnancy by feeling the uterus as it grows larger out of the pelvis into the abdomen. I wish that a woman's waiting period, i.e. *idda* was to be confirmed with a medical examination, either a doctor's examination or by a sonar photograph showing the inside of the uterus and whether there's an embryo, and in 3 months, it will definitely show whether there is pregnancy or not.

About the difference between menstrual and inter-menstrual bleed-

ing, if any, the cause of menstrual bleeding is known; and Dr. Yehia thinks that inter-menstrual bleeding is a pathological condition with special characteristics! Inter-menstrual bleeding is any bleeding other than the menstruation period, whether it is an extension of the menstrual period or a new normal period occurring prematurely or delayed after its regular time; it could also be a case of bleeding disorder or a malfunctioning of the pituitary gland, endometrial or cervical carcinoma or a tumor inside the uterus and many other causes.

Inter-menstrual bleeding in the Sharia expression is intended to allow women to offer prayer, pilgrimage, or to fast, but not to speculate on its medical significance.

Chairman, Dr. M. S. Tantawi

Thanks Dr. Hassan.

Sheikh, M. A. Al-Salami

About the issue of menstruation, menstruation is normal for most women. Every normal woman knows the time of her menstrual period, and when she gets this special bleeding she knows she is menstruating, so she abstains from praying, entering mosques or carrying the Qur'an, etc.

And according to that, women will observe their waiting period and the rest of Shaira provisions related to menstruation. However, disorders do sometimes affect this normal condition. Disorders are evident in the fact that some women bleed continuously, and this occurred in the days of the Messenger of Allah be upon him, and he gave those who applied independent reasoning, studied the issue in connection with its relation to worship and family provisions and needed to provide controlled limits for menstruation, i.e. the minimum and maximum periods, so that any bleeding other than that or more than that wouldn't be considered menstruation. So they said that the minimum is once - if a woman experiences one discharge of blood, it is considered menstruation and would consequently be counted in her *"idda"*, and after it she would have the major ablution and pray, and can have intercourse with her husband — this is the minimum of menstruation.

The complicated problem is the maximum of menstruation. If a woman doesn't have a normal menstruation, she'll have one that lasts for more days than normal. Would she then stay without praying all her lifetime? There is a Prophetic Hadith which is not listed under menstruation

but somewhere else under problems faced by women: the Messenger of Allah, may the blessing and peace of Allah be upon him, said that the one of them would stay half her lifetime not praying. Many of the jurists took "half her lifetime" to mean half her time that is half her month and consequently made the maximum of the menstrual period 15 days, and after that the bleeding is not considered menstrual and women may have major ablution, pray and have intercourse with their husbands. Now that we're gathered here with the doctors, we would like to know whether a woman could be continuously menstruating; and if not, what is the maximum period during which blood shedding is menstrual — not caused by something other than the congestion that occurs in every cycle? In other words, bleeding which is more than what results from the normal congestion that occurs in every cycle which is regarded as the effect of a cause and impurity the Prophet called it intermenstrual bleeding *(istihada)* this is the issue for which we request the help of doctors to clarify, may Allah bless them when they clarify it for us.

I'm only left with Dr. Hassan Hathout now; he wished the doctors would determine the *"idda"* and pregnancy by examination, which is an excellent aim to work for. However, the Islamic Sharia is general, it wasn't destipulated for those born in the state of kuwait, who were favoured by Allah to the extent that every woman has available a doctor to examine her and determine whether she's pregnant or not, the date pregnancy occured, etc. But what do we say to the rest of the Islamic World where woman can't get a doctor, even for more serious matters. Therefore, I say that the Islamic Sharia was not stipulated for the high-bred but for all people. If the Islamic world progresses, with God's will, every woman will be able to have a doctor's examination for pregnancy and that will make things a lot easier. The provisions, however, have to be general, we can't say this is a provision for such a country because doctors are available there, and this is another provision for another country where doctors are not available.

H.E. Sheikh Al-Ghazali

In the name of Allah, the Rahman, the Merciful. I have nothing to say more than urging doctors again to differentiate between menstrual and inter-menstrual bleeding because Islam emphasized one thing which we can't overlook: that the menstrual blood is a pollution:

> *AND THEY ASK THEE OF MENSTRUATION SAY THOU: IT IS A POLLUTION, SO KEEP AWAY FROM WOMEN DURING MENSTRUATION.*

This description of menstruation as "Pollution" must be related to something in the blood shed during the menstrual period which is not present in the blood shed in other cases of bleeding so that the other bleeding is "pollution" — free and consequently women are allowed to pray and have sexual intercourse. There's definitely a difference, and if doctors haven't discovered this difference yet, this doesn't mean that the difference doesn't exist. Therefore, I hope they'll look for this difference.

Dr. Hamed Abdulmajeed Jami'

The differentiation between menstrual and instrumental bleeding occurred in the Islamic Sharia in proven texts which include what Sheikh Ghazali mentioned now of the Qur'an as well as the Hadith of the Prophet,

> *"when Fatima Bint Hubaish asked him about the menstrual blood, so he told her that it is black blood that is known, meaning known to women".*

This Hadith is proven in the Fiqh literature.

There's also another Hadith about intermenstrual blood, when a woman, who was bleeding at times other than those of menstruation and in a way that was not similar to mentraustion, asked the Prophet about this bleeding, he told her that

> *"it was not menstruation but from a blood vessel".*

These are two proven Hadiths that occur in Fiqh literature in the researches on menstrual and inter-menstrual bleeding. Based on this differentiation, there are also consequent differences between menstrual and puerperal bleeding whether with regard to worship or other Sharia provisions, fasting, for example. If we say that the minimum menstruation is such and the maximum is such, then what is the legal consequence for the bleeding that occurs in the maximum period of menstruation? Let us suppose that a woman menstruated for two days: jurists said that the blood of menstruation is black, known to women, and is usually shed by the woman during a specific known period — women are not all the same in the duration of the menstrual period. If a woman is used to a menstrual period of 10 days and menstruated, in Ramadan, for only one day and there was no more bleeding after that, shall she pray then or should she wait until the other 14 days pass? And what happens, if she starts bleeding again during her regular period of two weeks or 10 days, would this be menstrual or inter-menstrual bleeding? What I want to say and insist on is that Sharia

differentiated between menstrual and inter-menstrual bleeding and denying that is a denial Hadiths and Sharia provisions established by jurists.

Chairman, Dr. M. S. Tantawi

I believe that now the jurist's viewpoint of this issue has become very clear, for as I heard from H. E. Sheikh Al-Ghazali, Dr. Hamed and others. Jurists are determined that there's a clear difference between menstrual and inter-menstrual bleeding. It is now the doctor's turn to agree with the jurists and provide us with practical scientific evidence which corroborates the authentic Hadiths of the Prophet, though what is authentic of the Prophetic Hadiths does not need any confirmation, it's only a matter of emphasis. Dr. Hassan wants to comment.

Dr. Hassan Hathout

Regarding the isuue of "Pregnancy-free uterus", I agree with Sheikh M. A. Al-Salami and I would like to add that I only suggested that the presumption be ascertained and proven true by *"idda"* as well as examination.

I further agree with you even more and say that if a woman, before completing her *"idda"*, had a sonar examination and it was 100% evident that the uterus is free from any pregnancy she must, I believe, complete the rest of her *"idda"* because that is a clear order, that *"idda"* period is such, and orders are to be obeyed; there's no room for reasoning here, though I can definitely know whether there is pregnancy or not before the *"idda"* is over; but the clear cut rulings are to be compliantly obeyed.

When the Prophet, may the blessings and peace of Allah be upon him, said to the woman that it was not menstruation, I think the rest of the Hadith was

> *"O Messenger of Allah I have bleeding and this is not the time of menstruation, and I do not feel the usual gripes nor tension"*

I think that this was the rest of the Hadith. These were the concomitants, I believe that the woman noticed some blood and she wasn't sure whether it was menstruation or not. If this bleeding had occurred at the regular time of her menstruation and she had had the feelings that she used to get every month, she wouldn't have asked that question but because it didn't occur at the regular time and wasn't accompanied by the regular feelings, she asked, and when it was clear that it was different from what she was

used to, he told her that it was not menstruation but a blood vessel, i.e. hemorrhage.

Now, that menstruation is "pollution", yes, the Qur'an says that and we must believe it whether we prove it or not, because this is a matter of faith. However, I believe that this is a general ruling for normal women. A legislation that men shall not have sexual intercourse with women during their menstrual period. This description applies to the case of a normal woman when she has her menstruation she should keep away because it is "pollution" and causes harm, etc. However, when we speak about inter-menstrual bleeding we find that we're not speaking of one case, because it could be due to a small cervical ulcer which produces drops of blood and so it is intermenstrual bleeding. or a woman may be suffering from cervical carcinoma or endometrial tuberculosis causing bleeding and so it is inter-menstrual bleeding. Therefore, doctors never overlook intermenstrual bleeding; any bleeding other than the menstrual is considered abnormal and consequently pathological, and should be investigated by questioning, examination and investigations. We are facing a pathological case here which causes a woman to bleed at times other than her regular menstruation periods. As for the maximum duration of menstruation, I believe that the minimum is actually once, she bleeds but the maximum is whatever the woman is used to have every month, and if it lasts beyond what she is used to there must be a pathological cause which has to be investigated.

Chariman, Dr. M.S. Tantawi

Thank you Dr. Hathout. Now, to best conculde this session I give the floor to Dr. Tawfiq Al-Tamimi.

Dr. T. Al-Tamimi

I have a very brief and simple comment. Though the questions Sheikh Omar asked us doctors are very simple, I believe we haven't satisfactorily answered them. These questions, no doubt, need statistical and laboratory studies and I hope that our fellows in gynecology, obstetrics, pathology and bacteriology will take these questions seriously, and with God's will, provide us in the future with scientifically accurate answers that are satisfactory.

Chairman, Dr. M.S. Tantawi.

We have agreed on lots of things in this blessed session through the

meeting between Fiqh and medicine. May allah, highly exatlted and glorified be he, count this session among our merits, and may the blessings and peace of Allah be upon Syyeduna Muhammad, his Family and companions.

Thank You.

DISCUSSION ON

MEDICAL PAPERS
AND
LAW & FIQH PAPERS
ON
MATTERS RELATED TO GYNAECOLOGY

GENERAL COMMENTS ON:

— SEXUAL ASSAULT,
— FATE OF BANK-DEPOSITED EMBRYOS
AND
— SURPLUS FERTILIZED OVA



DISCUSSION

Chairman, Dr. Salahuddin Al-Ateeqi

This, with God's will, is going to be the last in this series of sessions. We're going to deal with two topics which are but two sides of one coin: the first is "Sexual Assault" and the second is "Hymenorrhaphy". The first research was prepared by Dr. Seddiqa Al-Awadi and others, to be presented by Dr. Kamal Nageeb, the second is Dr. Kamal Fahmi's. Then the jurists will discuss the two researches. Let us begin with the first research. Dr. Kamal Nageeb: et al (Research Section Page No. 420).

Chairman, Dr. S. Al-Ateeqi

Thank you Dr. K. Nageeb for your accurate definition of the problem and for your brevity as well. I give the floor to our teacher. Sheikh Muhammad Al-Ghazali to comment and answer the questions.

Sheikh M. Al-Ghazali

The question is whether we should let that bud grow until it blossoms or abort the pregnancy during the first 40 days if the incident was revealed. The answer to that question is that the Prophet, may the bessings and peace of Allah be upon him, established that this fruit should live.

In spite of the different degrees of vileness of the crime-committing fornication with any woman is a crime, committing it with a neighbour is a more vile crime and incest is more vile still, yet, as mentioned in Al-Muhalla on the authority of one of the Companions, a child born out of wedlock is the best in his line of descent, he's better than his father and mother: consequently, taking into consideration the Messenger's Judgement, may the bessings and peace of Allah be upon him, concerning the Ghamidi woman I see that the life of this wretched creature must be righteously preserved and I can't pass an opinion that it should be aborted or killed. However, if the mother gets rid of it during the first 40 days, then I hope Allah will forgive her and us as we passed an opinion to be reticent about that or to conceal it. If there is proof that this embryo is extremely deformed to an extent that would not allow it to lead a normal life or to adapt

to post-delivery life, shall we keep it or abort it, regardless of its uterine age? The point here is: is the case definite or presumptive? If we are practically definite that this embryo will develop into a deformed or defective human being that cannot lead a normal life. I find it permissible to abort it because it's going to be a burden on the commnity and will himself suffer and cause those who live with him to suffer. But if the case is only resting on a mere assumption. I would withhold this opinion. I can't say that we get rid of a person because we think that he will be deformed: he might have a good future. It was said that some of those who were born blind or handicapped led a brilliant life, even more brilliant than Abu-Alala' Al-M'ari, though he, with all the diseases he was suffering from, got disturbed, and some poetry showing heresy was attributed to him, may Allah forgive him and us.

Shall we report her to the authorities? If what is meant by "authorities" is the government, the answer is "No", we are ordered not to expose people. There was a crime of fornication and the Messenger didn't even think of asking Ma'iz about whom he did it with, and he never asked the Ghamidi woman either about who did that to her. Thus, whoever was not exposed by Allah, we should not expose. However, if what is meant by "authorities" is some relatives who may relieve her of the burden, then it is possible to ask for their help in matters related to delivery and the bringing up of the baby, etc.

If Islam wouldn't allow abortion, then to whom should the child be attributed in this case? A child out of wedlock is not to be attributed to anybody. An illegitimate child doesn't have a father recongnizable by the Lawmaker. In Islam, the child is for the "bed": this one cannot be attributed to his father because the child has to come through marriage otherwise it is worthless to attribute an illegitimate child to the father who committed fornication with the mother. Should he be informed in the future in order to avoid marriage to a first degree relative when he reaches the age of marriage? That is possible because there is no harm in it as far as I see.

Finally, what I said is a sort of independent reasoning, and I can't after this but say that I have reached considering whether a man is prohibited to marry his brother's daughters or his sister's daughters by all divine religions or whether that is prohibited only in Islam. The Jews permit a man to marry his brother's daughters and his sister's daughters: it could be part of their disobedience against God and religions corruption-that is what I believe it is. Incestuous relations between father and daughter occurred in the Old Testament, unfortunately attributed to a pure chaste Prophet. The

Old Testament is a distorted book and includes a lot of filth: it says that when Lot committed incest with his first daughter, they produced the Moabites, which is a tribe, and they were also claimed to be out of incestuous relations with both his daughters, relations which produced large families and tribes. The jews proved this only to claim that their line of descent is pure while the others' is dubious and impure. The whole story is a mere lie, and their provisions are extremely controversial. However, we are, unfortunately, required in this era to deal with the mistakes of the Catholic Church and the small gangs that control the world, though we are not responsible for those mistakes. Suicide in the Islamic World will probably be discussed in a symposium or may be illegitimate children will. We probably have one in every 10.000, but when children born out of wedlock reach a percentage of 25% in a community, as evident in many statistics, this is the effect of mixing which has been accepted by the Catholic Church and other churches as well. Are we, Muslims, required to face and find treatment for these mistakes? No, we, as I have said, deal with the problems at the source not the outcome Our Prophet threatened and warned us that we will follow the christians and Jews, even if some of them had sexual intercourse with their mothers, some of us will do the same. This warning should make us very careful as we proceed in this life of today because the christians and the Jews have not only lost their religions, heritage and values, but they also lead loose lives. Unfortunately, no one in the world looks repugnantly at fornication except the pan-Muslim nation, while the other nations have lost the sense of prohibition towards fornication, usury, and the like.

Therefore, I'd like us to treat matters Islamically; let us not look at what came to us from other communities and try to save ourselves; we have to safe guard the source or in other words we must control the Islamic family life with Islamic controls.

The last point I want to talk about is that Islam considers that to err is human and that cruetly in punishing errors will not lead to rehabilitation. Like our bodies get dust from the atmosphere we live in, and get harmed by disorders of the systems operating inside them, our souls and our conscience may slip into errors and the natural treatment of such errors is worship, praying and fasting:

> *AND ESTABLISH THOU THE PRAYER AT THE TWO ENDS OF THE DAY, AND IN THE NEIGHBORING WATCHES OF THE NIGHT; VERILY VIRTUES TAKE AWAY VICE.*

We are required to purify our souls by a lot of worshipping. I believe

that not exposing people nor ourselves, and building up the community according to the values that, thank God, are still adhered to because they arise from our religion; are the basis for a world wide reform. But what I have no doubt about is that the modern civilization, though extremely advanced in science and other fields, promotes man's instincts and probably covers his nails or rather hooves with silk gloves while it promotes ferocity inside this man who appears in modern attire. I'm afraid I have stepped unto a rough course, and for that I apologize and may God forgive me.

Chairman, Dr. S. Al-Ateeqi

Thanks to the virtuous professor for his answers and for reminding us of some fundamentals that we should always keep in mind. I give the floor now to Sheikh M. A. Al-Salami to comment.

Sheikh M. A. Al-Salami

I was given the floor though I am not ready to speak, so if I'm not successful, it's my fault, and if I then it's a grant from Allah. The lecturer concluded with many consecutive questions: the first question was whether we should let that bud grow until it blossoms or abort the pregnancy during the first 40 days if the incident was revealed. I believe that the value of life is the same whether this embryo is the result of fornication with relatives or non-relatives or valid marriage. In Sharia life has the same value in all cases. If we consider abortion permissible before the first 40 days as a principle then it may be applied; and if we consider abortion prohibited when pregnancy is within wedlock then it is still prohibited in this case too. What if there is proof that this embryo is extremely deformed? Is this question an assumption or a definite fact? In other words, can doctors with the available medical means and knowledge determine definitely before the first 40 days whether the child will be deformed and whether deformity will be in its shape or in its brain? I want an answer to this question before I can answer. It is a question directed to the doctors to explain to us deformity and whether science has led them to a degree of absolute certainty that this embryo will definitely be deformed to an extent that would render him unfit for life or is it an assumption. We cannot base judgement on mere assumptions, for life must be respected.

The third question is about divulgence of secret. The original principle is that one shouldn't reveal something evil that he has witnessed. There's definitely a wise reason why Islamic legislation made fornication not to be proved unless witnessed by four eyewitnesses. If three were at one place

together and saw an act of fornication, they're to be lashed if they so tell, though they're talking the truth and are seeking justice; they're also to be declared transgressors and their witnesses are not to be accepted. In all crimes we accept the witness of two male witnesses of moral integrity, or one and two women, two women alone or one woman, depending on the crime witnessed, except in the case of fornication and/or adultery. In case of homicide the witness of two men is enough to apply the Islamic punishment, while fornication is not proved unless witnessed by 4 people who witnessed it together at the same time and place. Some jurists even say that if people looked through the key-hole and witnessed that they saw a certain man with a certain woman all naked, each of the four is to be lashed.

If only a movement under the cover was witnessed, even if 10 people witnessed it, they're all to be lashed. What does all this mean? It means that the principle in legislation is that he who witnesses something should expose it. The question arises, why? Because if there's a lot of talk about it, it becomes admissible and acceptable. If we keep hearing that Miss so and so committed fornication and that Mrs. so and so committed adultery, the community starts accepting it after some time. Morals haven't deteriorated so much in the west until this has become public and common; such publicity destroys the sexual relation. Therefore, divulgence of the secret is impermissible, and doctors should not reveal secrets, neither to relatives, non-relatives, nor even to the government. Doctors have never been required to inform the government nor relatives that a certain woman committed fornication with a certain man, on the contrary a doctor should keep silent and the woman has to bear the responsibility alone and soon pregnancy will be clear to everybody, relative or not. If Islam wouldn't allow abortion, then to whom should the child be attributed in this case? The Child, as H. E. Mawlana Sheikh Al-Ghazali said, is illegitimate and as Allah, highly exalted and glorified be He, destines a man to be blind, handicapped or lacking a limb. He also destined this child to be illegitimate. On one of my Friday speeches I said that the favours of Allah to us are uncountable, and that some of these favours are not usually noticed. Of these favours is that we know our fathers and everyone of us knows the name of his father, and only those who are deprived of this favour notice it. However, as this child is born out of wedlock, then it stays illegitimate and is not to be attributed to the father. According to the schools of Figh, the fact that a girl was born out of wedlock is against her being marriageable, because what is non-exsistent in the Sharia is considered non-existent physically. Al-Zamkhshary said, "If I were asked to which school I belong,

I would not tell, I will withhold it. For withholding it is safer. Until I am asked, aren't you a Shafiite?" I'll then tell. They will say that I permit a man to marry his daughter, though it is prohibited. "Any way it is only an opinion of the Shafiites. What is important for us now is that all relations to the man who committed fornication and his relatives do not exist and are of no consideration, for what is considered by Sharia non existent is materially non-existent, as if it never happened — so the fornicator is not the child's father, his mother is not the child's grandmother, nor is his sister the child's aunt. Consequently, the child should not be told in the future; he shouldn't know at all that his mother committed fornication with this man, this must not be revealed, even if it were known, based on all what I've said of the principle being not to expose, and that exposure doesn't happen unless the incident is witnessed to by 4 people before a judge; if they choose to witness, because they don't have to. There is only one case where exposure of adultery is a must, that is when a husband has not touched his wife since her last menstrual period and yet she became pregnant, then he has to declare that he hasn't impregnated her so that the child wouldn't be attributed to him. However, if a husband sees his wife committing adultery with another man, but she doesn't get pregnant, he doesn't have to expose her. That is why Muhammad Ibn Hindi, a jurist of Andalusia, damned the saying of a man. "I want to revive the Sunna now that they made it die".

The Jurists answered him that Allah did not need him to revive the "Sunna" for He stated it in His Qur'an and it is therefore eternal, and that it was better for him not to take the "Oath" against his wife and not to publicize the case so that virgins and women wouldn't know that his wife is as adulteress. This is what I could say off my mind, I hope it was to the point.

Dr. O.S. Al-Ashqar

Excuse me, Sheikh-Mokhtar. You said that if it was during the first 40 days and when deformity was definite, what if it is after the first 40 days? You didn't answer that question.

Sheikh M.A. Al-Salami

About this issue of during or after the first 40 days, I asked the doctors whether they would be dead sure. I need to know this before I answer the main question. I have a question: can doctors tell that embryo will definitely be deformed, the type and degree of deformity? and what's the meaning of deformity? Because being blind is different from being crippled, and

both are completely different from being mentally retarded unable to recognize anything in life, to understand or to control movement. The issue differs from one case to another, this will clarify the question for me in order to be able to answer.

Chairman, Dr. S. Al-Ateeqi

Thank you, Professor, for returning the ball to the doctors' field as far as the question about deformity is concerned, and for reminding us, in addition, that disapproving that which is disreputable should always be the condition. I'm afraid to open the door for comments and questions lest that should consume much of the time allotted to the other lectures. However, may be we can have just five minutes for discussions, I give the floor to Dr. Tarnadeel Al-Gindi for a one minute comment.

Dr. T. Al-Gindi

In my practice of psychiatry we get cases that are wilder than imagination and we're sometimes unable to decide whether what the patient said was true or mere imagination. I'll give an example related to sexual assault: A young woman, 20 years of age, was admitted to the psychiatric hospital following attempted suicide. After several consulting sessions she said that the reason was that a man in a degree of consanguinity precluding marriage to her has repeatedly assaulted her sexually. In my opinion, if what she said was true, we are racing here a three-fold situation; first, this man is sick; second, the young woman is a victim in the first place and a patient in the second place; third, the crime of sexual assault.

With all due respect to professional confidentiality and to what has been said by the virtuous speakers, in order to verify what she said can we have her face the accused relative and divulge her secret, for the assaulter could be someone else and she's only accusing a relative precluded to marry her. How can we provide protection of this patient from this man to whose house she is going to return where she'll spend the rest of her life? How can we treat her if safety and security cannot be provided? I hope these question will be answered.

Professor Sheikh Ezzuddeen Al-Khateeb

As to the issue of pregnancy resulting from an evil relation; as H.E. Mufti of Tunisia and H.E. Sheikh Al-Ghazali said, the embryo is a human being that has the right to life and aggression on its life is absolutely impermissible. If it were permissible to abort or kill such an embryo, the Messen-

ger of Allah, may the blessings and peace of Allah be upon him, would have been the first person to give us the justification for killing a child born out of wedlock when the Ghamidi woman confessed fornication. As for the issue of deformity: Whether the embryo will be deformed or not, whether we abort it because it will be deformed or not, and whether being deformed is definite or not. In fact, this should not be an area of questioning at all because you doctors have raised questions, in the morning session, about the zygotes in test tubes — after an ovum is united with a spermatozoon, whether it is permissible to dispose of it or not; if you didn't agree on such a case, then how about a case where there is a real human being? I'll ask you another question; what about a child not born out of wedlock, but legitimately, and it was deformed, is it permissible to kill it because of its deformity? There is no difference between a human being already born deformed and a deformed human being still in the belly of the mother; aggression is impermissible in both cases. Our religion also prohibits aggression on it, the Messenger, may the blessings and peace of Allah be upon him, said.

> *"It is not permissible to take the life of a Muslim who bears testimony (to the fact) that there is no god but Allah, and I am the Messenger of Allah, but in one of the three cases".*

Aggression on a human life is a major crime. This human being born out of wedlock is to be attributed to the mother, not to the father. This is the provision of Islamic Sharia, and all the jurists agree to this: it is not to be attributed to the father, but it is to be attributed to the mother so that it would be saved and to stay a respected human being.

Chairman, Dr. S. Al-Ateeqi

The five minutes are over. Do you agree to have an extension of five more minutes? I give the floor to Dr. Kamal for explanation only:

Considering the issue theoretically, the possibilities that this embryo will carry congenital deformities are very great — it's only a theory of possibilities, but the possibilities are very high. However, prenatal diagnoses are made to diagnose many hereditary diseases during pregnancy, the deformities we mentioned, however, are the ones that would render the baby completely handicapped, unable to adapt to post-delivery life. Lacking a finger or having an extra finger wouldn't be a calamity or anything of the sort! the deformity could be a defective neural tube, mental retardation or disorders in metabolism; this is what we mean by deformity in this case.

Chairman, Dr. S. Al-Ateeqi

I suggest we postpone any other comments, if any, until the remaining research is presented, then those who would like to stay after that for discussions may do so. The second topic: "Hymenorrhaphy", presented by Dr. Kamal Fahmi; the research is on Page in the handout. I give the floor to Dr. Kamal Fahmi.

Presentation of Research by Dr. K. Fahmi (Research Section Page No. 394).

Chairman, Dr. S. Al-Ateeqi

Thanks, Dr. Fahmi for this concise research and for presenting specific questions which I hope the two Fiqh researches will answer. I give the floor to Professor Sheikh Ezzuddeen Al-Khateeb Al-Tamimi to present his research first.

Presentation of research by Sheikh E.A. Al-Tamimi (Research Section Page No. 517).

Chairman, Dr. S. Al-Ateeqi

Thanks to the virtuous professor. The second research is Dr. Muhammad Naem Yaseen's which starts on P. 531 and takes thirty something pages. I hope Dr. Yaseen will sum it up in 15 minutes.

Presentation of Research by Dr. M.N. Yaseen, (Research Section Page No. 531).

Chairman, Dr. S. Al-Ateeqi

Thanks Dr. Yaseen for your brief presentation. May be we should have two or three of the jurists and two or three of the doctors. Who would like to comment?

Dr. Hamed Abdulmajeed Jami'

I'm not going to comment on a certain research in particular, but I'd like to draw the attention to the fact that virginity is a matter of consequence to jurists in many cases: the permission to marry the virgin and the one who is not a virgin, is of consequence, even in making and entering into a contract, it is a consequence to those who say that a woman can marry herself and directly makes the contract as well as those who say she cannot.

Virginity is also a matter of consequence to jurists when a man marries a woman on condition that she is a virgin; some jurists even say that if husband makes a condition on the wife's legal adiministrator or on the wife that she should be a virgin, then after marriage finds her to be otherwise, he will then have the right to divorce her, and to raise the case to the judge who would divorce them. Virginity is also a matter of consequence to the jurists in many other fields of Fiqh which I don't want to elaborate much on and I don't want to elaborate on the ones I've already mentioned either, because that would take a long time.

I'll only add to what I've already said that hymenorrhaphy is definitely deception to the husband-to-be. I'm not saying that the ruptured hymen is proof of fornication, but it is definitely deception of the future husband. It also has another aspect which is prohibited by the Munificent Qur'an

> *AND I WILL COMMAND THEM SO THAT THEY WILL ALTER THE CREATION OF ALLAH.*

Hymenorrhaphy is not less in gravity than plucking hair from the face, separating between the teeth or tatooing as per the Hadiths mentioned, including the one of Abdullah Ibn Masoud.

Sheikh M. Al-Ghazali

I look at this issue from the vantage point of the fact that when a man slips then repents he finds the door to repentance open before him and paved. If a girl slipped and it was known of her that she repented and wanted to lead and honest life once again, should she be helped to that or should she be hindered and humiliated for ever? This is what I'm considering. If a prostitute wants to have a hymenorrhaphy we wouldn't agree or accept that, but slipping is different; to err is human. For the Arabs and Oriental people generally, as part of their culture, when a man commits fornication he doesn't find any harm in so doing, but if his daughter commits fornication, he kills her; is this our faith, is this the logic of Islam? I don't think I am lessening the gravity of committing fornication on the part of the boy nor on the part of the girl; either of them should be punished if presistently sinning. However, if the girl repents and feels sorry do we keep the doors closed before her though we open them for the man? Why does the man commit fornication, stays unexposed and can marry without any embarrassment, while if a girl slipped she is branded.

I swear to God, girls have come to me, they only played with themselves, and I believe them because their tears were faster than their

words; they were lost at the issue of hymenorrhaphy. I wasn't sure myself — I am not a jurist, I care about education more than about Sharia provisions. So I thought that it is impossible that Islam opens the door to repentance for men and makes it easy for them to get back to what is right and yet closes it before women. Therefore, I'd tell the doctor to study the condition of the patient, so if repentance is evident in her and if you believe that unexposing her will make her born anew as an honest girl, then perform the hymenorrhaphy; but if she is a coquette, then don't help in deception.

Sheikh, M. A. Al-Salami

We've listened to Professor Yaseen as if we were listening to a lawyer in court. There was a change in the point of research we don't say that the girl with a ruptured hymen has committed fornication, the actual issue is; would the doctor who performs hymenorrhaphy have deceived the girls' future husband or not? A man came to the Messenger, may the blessings and peace of Allah be upon him, and wanted to profess Islam, but asked the Messenger, not to make fornication impermissible, so the Messenger, said.

"Do you accept it for your mother"?

The man answered, "No" He asked him.

"Do you accept it for your sister"?

The man answered, "No" and "No" every time he was asked. So the Messenger, said.

"That likewise the people do not accept it for their mothers, sisters or daughters".

Likewise, I ask every one of us, while we're here, to get back to himself, after what you have heard, does anyone of you accept to marry a girl who had hymenorrhaphy without knowing that? Praise be to Allah. We are not mature enough and so are the customs as envisaged by Professor Naem. Still. Would a man accept to marry a virgin of whose virginity he is dead sure while the fornicator laughs at him in the street for the husband only got his leftovers. Deception is nothing but deception for me, and I believe that anything that goes as far as deception shouldn't be done.

This doesn't mean that this girl is finished, I know many men who out of love married girls who committed fornication.

However, it is different when the girl has sinned, and if Sharia were

applied and she confessed, the Islamic punishment would have been applied on her, thus exposing her.

> *AND LET NOT TENDERNESS TAKE HOLD OF YOU IN REGARDS TO THE TWAIN IN THE LAW OF ALLAH, IF YE HAVE COME TO BELIEVE IN ALLAH AND THE LAST DAY. AND LET WITNESS THIS TORMENT A BAND OF THE BELIEVERS.*

Thus, this issue is very clear. Mercy is no doubt enjoined by Islam, but it is also mercy that deception doesn't occur and doesn't exceed the limits, so that we don't cry later that it happened. I believe that what really holds a girl back from committing fornication is the fact that she has to preserve her hymen and when that is destroyed, by permitting hymenorrhaphy, a door to evil will be opened; this is a way-in for Satan. So. let's fear God.

Dr. Yehia N. Khawaji

To begin, I'd like to say to Dr. Yaseen that while he was presenting his lecture, he asked questions and answered them himself, and I believe that is not right. He should have asked the questions and let either the doctors or the jurists answer them, not to answer them himself; that's not right, and I believe the majority agree with me to that.

The second point: about social justice and abortion, we have forgotten that, there are also two topics that I'd like to get back to sexual assault. The issue I repeat, is opening the door to prostitution and I'll give you examples from Europe, for I've witnessed cases like these myself. People go there from the Gulf Area in particular; God favoured them with money so they started thinking of nothing but sex. Some girls who can afford it travel abroad and do whatever they want and before getting married they go to a doctor, tell him a tale about what happened to them, how they were raped and ask him to mind the hymen out of mercy; how can I take it for granted that such a girl is telling the truth? A hymenorrhaphy costs only a thousand pounds or a thousand dollars which is nothing for such a girl, if we charge 20 thousand she'll pay, and it turns into a trade this way. We shouldn't forget important points like opening the door to prostitution for such girls especially with the contraceptive pills being so available and handy. If a girl finds out that she's not going to get pregnant and hymenorrhaphy too is available, then there will be no problem-the door is open to prostitution. I hope that Dr. Yaseen will take these two points into consideration and stop playing the lawyer for, I believe, this is not a good job — to defend prostitution. May God bless you and thank you.

Dr. Salah Al-ateeqi

Thank you, Mr. Chairman.

I'm not defending Dr. Yaseen, I'm rather fascinated I'd like to add another bit of information: there are some girls born without a hymen, this is, mentioned in some medicine books; a very limited percentage but it would raise doubts in case of denial. What is the Sharia attitude in such a case?

Dr. Tawfiq Al-Wa'i

There's no doubt that Dr. Yaseen's research is very valuable and in conformity with the Sharia fundamentals as to unexposing male and female Muslims. In fact, we have seen how Omar Ibn Al-Khattab, may Allah be pleased with him, acted in a certain incident: a man came to him and said, "I have a daughter that I buried alive before I became a Muslim, but saved her in the last minute, when Islam came, she became a Muslim; then she slipped into the sin of fornication. When some people came to propose to her. I told them about that, so they left. Some other people have come now to propose to her, shall I tell them about her slip?" Omar answered, "No, if you mention that to them I'll punish you and make of you an example in the country. Marry her like chaste women and don't mention anything to them". We're not, in fact, speaking here about the type of deviant girls whom the fellow doctor has seen fooling around in Europe. Dr. Yaseen has, in fact, made it clear that the women who do it as a trade or do it publicly, or those who are loose are not to be included among those considered for hymenorrhaphy. However the point which I'd like to raise in connection with-this issue is: shall the girl's word be taken here or should the opinion of her family be asked for as well? In other words, shouldn't we take the opinion of the girl's family in order to be sure that there's no crime involved? I believe that taking the opinion of the family, the father or the legal administrator is important so that they won't expose her, yet at the same time know about what she had done and keep an eye on her for her good, with God's will.

After all, we permit telling lies about trifles and we also know that it is permissible to lie in order to reconcile between people — which means that for reconciliation between two human beings lying is permissible. So why don't we overlook it in this serious problem which may cause a scandal not only for the girl but also for her family and even for the Islamic community as it opens the door for others to slander... etc. And above all, the

serious detriment which all of us should avoid is giving a free rein to the girl or closing the door to repentance before her, for that may lead to looseness and similar faults. Lying is permissible for the sake of reconciliation between people; a husband tells his wife a lie and a wife tells her husband a lie when a lie is needed to reconcile between them, etc. So let's look at the issue from this perspective and we may intervene with some directives and conditions but we shouldn't close the door.

Dr. Hassan Hathout

In the first place, it's not true that a girl could be born without a hymen; throw that book away. There are two sides to the issue, as you see, and we shouldn't be affected by excitement or feelings. None of us likes fornication or defends it. I've never, thank God, committed fornication, but as a gynecologist I've performed this operation twice and helped another doctor three times. I don't like to perform this operation and I usually tell the people who ask for it to go away. And no one of us likes to be renowned for performing this operation; there are doctors specialized in it in the medicine market and they earn millions out of it. When I was an intern in Al-Demerdash Hospital, in 1951, a girl from Menya, Upper Egypt, who was a maid-servant was brought by her mother for abortion since some evil person had raped her and she got pregnant. I convinced the mother that we don't abort and that the embryo has the right to life and that we can still save her from exposure; the days were still good then. She was admitted to the hospital when her belly started to get bigger; I admitted her into the hospital and no diagnosis was recorded and she stayed until labour pains started and we took her not to the delivery room but to a side room. She delivered the baby and we had her fingerprint on a waiver document as concerns the baby, in conformity with the combinational procedures; and this baby had a story and I'm still following it up, However, a few months later the girl came back with her mother and the mother told me that the girl's father is dead and that the girl was proposed to through her paternal uncle who accepted, and that if the girl married and was found to have no hymen she would be inevitably slain. So, I went to my late professor Dr. Ahmad Ammar, may Allah have mercy upon him, and told him the story truthfully and that we had two points to consider: the first is that if we performed the operation, we would be changing facts and deceiving the husband-to-be, etc, and that is prohibited; but the second consideration is that the girl would be slain. I explained that I believed that this was a harm and that was a harm and that we should choose the lesser harm, and

I asked for the professor's permission to make her a new hymen, and he permitted me. So I did it and the girl got married unexposed and is still unexposed. This is something which I denied many other girls depending on my discretion.

In fact, when a cognette comes to me and my intuition tells me that she doesn't deserve to be unexposed; and being also careful not to expose myself because if girls come one after the other, they tell each other. Besides, if the Minister of Health knows of it, he may take some action against me. However, so far I have a very peaceful mind because I've conscientiously done it — one should apply the rule of choosing the lesser harm. When it is a life against deception, one's heart may guide one in choosing the lesser harm. I'd like to say that the hymen is truly a guard of chastity since the girl who has an intact hymen wants to keep it and that makes her less susceptible to slipping into sin, but leaving the girls without this guard may drive her to sin further. In other words, the girl who lost her hymen, unless she is a fallen prostitute, would have the guard back in its place with quick hymenorrhaphy, and then knowing that she has a hymen she's not going to sin again, but if I leave her with a defoliated hymen all she needs will be contraceptive pills. There could also be another perspective: that I wouldn't respect a girl who abstains from fornication only because she has a hymen, and I wouldn't consider her honourable nor chaste. When there are brothers and sisters: the boys fornicate and the girls, don't only for fear of deflorating the hymen and the consequent scandal, I don't consider this honour, I consider it social hypocrisy. The community which is reticent when boys commit fornication and is furious when girls commit it is not a fair community.

Dr. M.S. Al-Ashqar

I wish I could speak a little about the first topic. Regarding the topic under discussion now: about the deception involved in hymenorrhaphy, it seems to me that the case is not what Dr. Yaseen pointed out that deception in respect of the Sharia evidence is for providing a proof. The point is not to provide a proof. But it is as he said an "evidence of integrity" and we don't want this evidence to be false. We want the husband to be 100% sure that he has married and honourable decent woman who has not been touched by another man.

> *WHOM BEFORE THEM HATH DEFLOWERED NEITHER MAN NOR JINN.*

I've found in the proven Prophetic Sunna in the two Sahihs that the

hymen is a valid evidence as the Prophet, may the blessings and peace of Allah be upon him, said in the story of the three who took shelter in a cave:

> *"The man who wanted to seduce a poor woman who was in a dire need of money, so he wanted her to take money from him and let him have sexual intercourse with her, but she told him to fear Allah and not to take off the seal except righteously, i.e., not to deflower her except through valid marriage".*

So, a hymen is a "seal" like the seal on the envelope of a confidential letter sent from one person to another; if it is delivered with an intact seal, the seal of the Department or of the sender — a wax seal, then the receiver is dead sure that letter was not opened and he opens it himself perfectly assured that no one else had access to the secret it carries and that the deposit in trust was safely delivered.

However, with the cases presented by Prof. Yaseen who so excellently presented the details of cases where it is impermissible to mend the hymen or where there is opposition to hymenorrhaphy, I don't agree with H.E. Sheikh Al-Khateeb that hymenorrhaphy is a kind of changing the creation of Allah, because we said, and I believe a decision was passed, in the morning session that plastic surgery would be impermissible when it changes the normal original condition but not when it treats a wound, like when a finger is severed and rejoined or in case of transplanting a finger or a kidney from another person. We said that we all agreed to that and I didn't see anyone objecting to kidney transplant as it can't be said that this is changing of the creation of Allah. it is, in fact, returning the creation of Allah to what it originally was; there shouldn't be any dispute over treating wounds and injuries resulting from falling down. I believe that rape is similar to wounds and accidental injuries because the girls would have no hand in it, yet no man will accept to marry her if he knows she was raped because he would think she faked rape. So, if the doctor knows that the girl was raped, she definitely had no hand in it, and the condition should be returned to what it originally was, exactly like a wound. These are cases of treating a wound-or an affliction to the creation of Allah — in order to return the creation of Allah to the original condition.

I believe that these cases shouldn't be disputable-cases of rape, falling down and wound. Now remains the case of fornication which is of two kinds: fornication just once or what we may call a "slip" and prostitution, and each of the two kinds subdivides into two cases because the case is different when either of them, even the prostitute, is repentant. I look at the two equally because H.E. Sheikh Ghazali considered man and woman

equal when they repent. We accept the man who was habituated to fornication when he repents so we also accept the prostitute when she repents. Allah, highly exalted and glorified be He, pointed this out in many instances and the Sunna shows it too. However, when we speak of repentance we should differentiate between the repentant and the deceiver. Who is the deceiver? It is the one through whose conduct you can tell that she is still a prostitute, but she is getting married after a short time and wants to deceive her husband — this is the worst case truly. Now, remains the case of slipping just once; in fact, I wanted in the beginning to be against professor Yaseen in respect of this case — to slip, but I'have come to agree with him. When we were discussing the first topic in this symposium, I said that the one who slipped into committing fornication just once may lie and even swear to it if asked by the judge. So considering the issue from the same perspective, I tend to take Dr. Yaseen's side at this particular point: if the girl has slipped only once and repented, and her repentance is evident in her conduct and that she definitely wouldn't do it again, and in the case of a prostitute we must make sure whether her repentance is true or not. I hope this will be of use in reaching a decision, with God's will.

Chairman, Dr. S. Al-Ateeqi

Thanks, I'd like to take your opinion on some proposals: the first is to postpone the discussion of this topic until 11:00, tomorrow; the other is to carry on for another hour. Who agrees to carry on for another half an hour..

Dr. M. N. Yaseen

I didn't aim. in the first place, at convincing you of my opinion, not at all; I know that it is rather impossible to simply convince other people of what took me three months. I rather aimed at motivating you to read the research as it is a trust and perhaps the researcher is right. The fellow participants who opposed me, especially as some are discovering bit by bit that some or many of the parts or divisions mentioned in my research are right, my only aim is to raise your interest in reading the research. This is one point.

The other point: about the kind doctor who said that this is something that concerns jurists; I don't know what his concept or definition of the jurist is. I'm a jurist too, I'm not a physician, I don't like to introduce myself but I'm specialized in Sharia and comparative Fiqh and I believe that my position is printed on the cover of the research. However, if being a jurist is acquired in any other way, I'll with God's will request it and present it to you

at the next symposium, and I do hope that with God's will, you'll only think well of me. You have, probably, read one of my books that were published in America or in other countries, e.g. "Al-Iman" (i.e. FAITH) may have reached you. This is what I have come to, for it is a matter of independent reasoning, I don't agree with those who say that it is indisputable; I let people express their opinions and thoughts without imposing any pressure on science, debate or symposia. I believe, and Allah knows better, that this is the right way towards reform, with God's will.

Chairman, Dr. S. A-Ateeqi

Those who would like to pursue debate please return at 11.00 tomorrow. The evening session will be held at 5.00, with God's will. The Recommendations Committee is to meet right after this session. Excuse me, there is a proposal that we meet for the debate at 4:00 instead of 11:00. Then, we'll start tomorrow at 4.00 p.m. and we'll not meet at 11:00.

Dr. M.A. Ibrahim

Mr. Chairman, I'd like to ask a question, first, please: are the minutes of this session being recorded? OK, very good. First, I'll get back to the issue of fertilized ova, because we unrighteously didn't get to discussing this topic yesterday; we presented the researches then the chairman adjourned the session and promised to discuss these topics the next session, but the next session was all given to menstruation and intermenstruation, and our topic was never discussed. In fact, there are many questions raised in the two researches presented by Dr. Basalamah and myself and we request those questions to be answered. Our kind professors were unanimous, except Mawlana Sheikh Al-Ghazali. We raised the issue of fertilized ova, wihich is, dear fellows, the issue of the world today, east and west; the U.S. Australia and France; the church and the jews. We want to know the provisions of Allah for this issue. You said that embryos are respected; Yes, we accept that they're respected and please tell us what happens when we preserve them and one of the partners dies? If the husband dies, what are the legal consequences regarding inheritance and the wife's *"idda"*? And who has the right to dispose of these fertilized ova?.

Second, we agreed in the symposium on Human life on the beginning and end of life and now I find that in this symposium human life is respected only after the ovum is settled in the uterus, and yesterday someone went back to saying that a human being is alive as soon as fertilization

occurs. We'd like to know whether this is the opinion of the majority in this symposion, or not. This issue is extremely important, because on it a lot of provisions are based. It is, in fact, an important issue whether in Kuwait or in Saudi Arabia — the issue is important to us and we're seeking a clear-cut opinion; and we're not going to accept any recommendations of the committee regarding this point without convincing discussion.

Chairman, Dr. S.A. Al-Ateeqi

I give the floor to Sheikh E. Al-Khateeb to answer the questions.

Sheikh E. Al-Khateeb

Disposing of embryo before its replacement into uterus takes place, isn't that what you're asking about? I do confirm what H. E. Sheikh Ghazali said: such an embryo is of no importance whatsoever and it is inadmissible to base on it a Sharia Judgement to the effect that it inherits, this is inadmissible. In fact, only the embryo in the mother's belly is the one that inherits while the one in medical instruments and records is of no consequence at all. The embryo which is of Sharia consequence, why is it called embryo? Because it is in the mother's belly in "a threefold darkness". We can't call the cells that divide and multiply out of a spermatozoa and an ovum in test tubes outside the uterus an embryo, this is of no consequence in inheritance. I was surprised at those who asked about the legal consequences in case sperm was taken from a man with which an ovum was fertilized then the man died. As soon as the man dies all his relations with life ends as well as his relation with his wife and matrimony is no longer valid, therefore any use of the sperm and the ova after death is illegitimate and does not conform to Sharia; I'm dead sure of this, no doubts or assumptions, I'm positive that, the death of the husband is the borderline between existence and non-existence of matrimony. As soon as the husband is dead there will be absolutely no matrimonial relation between his wife and this dead man. So any sperm deposited in a bank is worthless and using it is prohibited; I don't say that it is fornication, but it does have something in common with fornication in such a case since this woman is no longer the wife of that man and we can't take his sperm to her, not to mention that Sharia-wise this woman may get married immediately after her *"idda"*. What's said in the west that the wife wants to cherish the love and memory of her dead husband, and the like, is, I believe, indisputably inadmissible in our religion and Sharia.

As for the issue of abortion, if there is a borderline determining the be-

ginning of man's existence as a human being with a soul; as soon as man has soul, i.e. the time set by the Messenger of Allah, it is absolutely indisputable that abortion is impermissible after that except in one case — when the mother's life is definitely in danger. As for the period prior to soul "breathing" into man, there are two Fiqh opinions, whether in the past or modern Islamic history: some jurists said that it is permissible as long as the soul hasn't been formed i.e. abortion doesn't mean the killing of a human being; some jurists said that life exists — of course, life exists in all living creatures, however, the others don't consider it the kind of life of a human being with a soul. Of course the disputed issue is retardedness in an embryo prior to soul "breathing" into him. Nevertheless even those who say that it is permissible, say that it is only permissible under certain special circumstances and for particular necessities — it is not a case of absolute permissibility so that if a woman finds her self a little tired she could tell her husband that she'll get rid of the baby; this would open the door for a tremendous evil. I'm always asked in Amman whether it is permissible and I answer that it is impermissible, because I believe that if I said it is permissible, hospitals would get flooded with abortion cases since every fight between husband and wife would lead to abortion in many cases. Of course, Muslims don't need such wild situations in their matrimonial and family life. Therefore, it would be more appropriate for this symposium not to permit abortion except with very restricted limits — abortion prior to the "breathing" of soul into the embryo only, but after it is "breathed" into him abortion is impermissible, as well known, except when the mother's life is actually and definitely in danger. I urge the symposium not to widely permit abortion prior to soul "breathing", if we have to permit it, let it be in specific semi-necessary cases; Opening the door widely, I believe, is not permissible by the Sharia for purposes of preserving the Muslim family.

Chairman, Dr. S. Al-Ateeqi

I call upon Sheikh Badr to speak about what to do with surplus fertilized ova.

Sheikh Badr Al-Mutawali

In fact, what the professor who spoke before me said is almost all to the point. I participated in the symposium that passed opinion on abortion, when it is permissible and when the human life begins and ends, and, we agreed that human life starts from the minute the ovum, the woman's egg cell, is fertilized with the man's spermatozoon, this as the professor said,

when the process occurs in the woman's body. However, when an ovum is fertilized with a spermatozoa out side the woman it is of no consequence at all and we shouldn't give it any weight whatsoever in the Sharia whether in case of abortion or spoiling. In other words, if we spoil this ovum there' nothing to it and there are no legal consequences whatsoever because this ovum doesn't have any value or respect unless it is in the womb, in which case it forms the real correct start of human life, though worthless outside the uterus.

If we open this door, we'll be opening a door of tremendous evil. Suppose we have a fertilized ovum outside the uterus and it grows until it has something of a human form, some parts, then we spoil it; I'm not saying that there would be any consequences in this case, but out of respect to humanity, it should be buried; I can't imagine considering that it had life and died and we give it a name and offer funeral prayer; I don't think we have gone this far, the point is, if it grows until it has something of a human shape and we spoil it, we shouldn't throw it away for dogs to eat or anything of the sort, we should wrap it with a piece of cloth and bury it out of respect to a human being, or rather part of a human being, just like when some part of a human being is severed we don't throw it away to some animal or dog to eat but we respect that part:

AND ASSUREDLY WE HAVE HONOURED THE CHILDREN OF ADAM.

However, it is absolutely impossible to make inheritance provisions for a fertilized ovum outside the uterus, nor can we make provisions for naming nor any other provisions related to human beings because we only respect this ovum when it is inside a woman's uterus. We shouldn't really give any respect to such an ovum; it is impermissible to abort or spoil it when it is inside a woman's uterus, but not when in a laboratory — In fact, I have a phobia about laboratories because I have an incident which I can't tell you about and it made me doubt everything. Therefore, I had my reservations, in this symposium, about fertilizing a woman's ovum with her husband's sperm, because this door opens to a detrimental evil since this ovum will go to laboratories where there are hundreds of specimen and lineages of descent will get mixed up. So, I was reserved in this respect, because carelessness is so terrible in laboratories, and saying that precautions should be taken is theoretical talk rather than practical. What will practically happen if we open this door is and endless confusion in lineages of descent. I do really believe that these fertilized ova as far as they are in the laboratories are worthless and we shouldn't base on them any provisions of inheritance or otherwise, and God knows better.

Chairman, Dr. S. Al-Ateeqi

Thank you. We are left with two speakers. I give the floor to Dr. Tawfiq Al-wa'i

Dr. T. Al-Wa'i

In fact, when we speak about inviolability of ova, there is a difference between inviolability and respect. There's no doubt that ova and human parts should be respected but they wouldn't have any inviolability at all, because giving them inviolability will consequently necessitate other measures. Sanctity is not to be given just like that. Destroying an ovum involves something of aggression, but we find that the Qur'an honours man in two cases, when Allah said:

> *THEN WHEN I HAVE FORMED HIM AND BREATHED INTO HIM OF MY SPIRIT FALL DOWN UNTO HIM PROSTRATE.*

So this respect is not due to man until he's formed and the soul "breathed into him", and there shouldn't be any aggression against him ever since. The symposium on abortion discussed this point and clarified it. However to speak about sanctity of ova as H.E. Sheikh Badr has said, when they're in laboratories for testing, outside the uterus, if aggression occurs against a man or a woman carrying an ovum, or anything of the sort, there will be no consequences to that. If we're supporting abortion of deformed embryo or as some said the embryo that is evidently and definitely deformed, won't it be more appropriate to approve the destruction of an ovum which doesn't involve an embryo or anything and has no sanctity whatsoever. If the deformed embryo no longer has sanctity when it is indisputably proved to be deformed and that it won't be able to support itself in life as well as useless or not much of a human, won't it be more logical when we speak about ova that have nothing of human life; otherwise everything on earth has life, won't it be more appropriate not to give them sanctity or even to consider it hated to dispose of them? There is absolutely nothing to it.

Chairman, Dr. S. Al-Ateeqi

Thank you Dr. Tawfiq. I give the floor now to Dr. Ahmad Shawqi Ibrahim.

Dr. Ahmed Shawqi Ibrahim

Embryos, no doubt, have inviolability, but what are the embryos? The

word embryo, in Arabic *"janeen"*, is derived from the word *"Junna"* which means protection. The Messenger, may the blessings and peace of Allah be upon him, said.

> *"Fasting is "junna" i.e. protection".*

Hence, the embryo *"janeen"* is the protected creature. The word *"ajinna"* (plural form of *"janeen"*) occurs in the Qur'an only once:

> *HE IS BEST KNOWER OF YOU WHEN HE PRODUCED YOU OUT OF THE EARTH, AND WHEN YE WERE EMBRYOS "AJINNA" IN THE BELLIES OF YOUR MOTHERS.*

Thus, the embryo is not an embryo unless it is in the "belly" of the mother. Therefore, a ferlilized ovum, even when it grows, outside the uterus is never considered an embryo. As Allah said in the Qur'anic verse:

> *AND WHEN YE WERE EMBRYOS IN THE BELLIES OF YOUR MOTHERS.*

The embryo has to be within the protection of the uterus. Thus the term "frozen embryos" is not correct or it is a mistake because those are not embryos. What is created in a test-tube or in a laboratory should never be called embryo at all because an embryo doesn't exist except in the mother's uterus. "He createth you in the bellies of your mothers, one creation after creation, in a threefold darkness". This is what I wanted to clarify, and I hope it will be included in the recommendations along with a definition of "embryo" so that we would know what an embryo is.

Chairman, Dr. S. Al-Ateeqi

Thank you. There are some questions.

Sheikh E.K. Al-Tamimi

Regarding the inheritance of a natural embryo, even the natural embryo has no right to inheritance until it's born alive; I mean that if it is born dead it doesn't inherit at all but, after it's born alive as a full human being — being alive is the cornerstone.

Another point: Allah, says.

> *O MANKIND! IF YE BE IN DOUBT RESPECTING THE RESURRECTION, THEN WE HAVE CREATED YOU OF DUST, THEN OF A DROP, THEN OF CLOT, THEN OF A PIECE OF FLESH, FORMED AND UNFORMED, THAT WE MIGHT MANIFEST UNTO YOU OUR POWER. AND WE SETTLE IN THE WOMBS THAT WHICH WE*

WILL UNTIL A TERM DETERMINED. THEN WE BRING YOU FORTH AS BABES, THEN WE LET YOU REACH YOUR MATURITY. AND OF YOU IS HE WHO DIETH, AND OF YOU IS HE WHO IS BROUGHT BACK TO THE MOST ABJECT AGE, SO THAT AFTER KNOWING HE KNOWETH NOT AUGHT. AND THOU BEHOLDEST THE EARTH WITHERED UP.

He created us "of dust" by creating Adam, who was created of dust and there were no human beings before he was created the way Allah created him. "Then of a drop" by making the starting stage of creation for Adam's descendants of the water (sperm). The fact that man's creation starts with water doesn't mean that this water is man just as dust is not Adam. "Then of a drop" means that it is in itself not the man in question. "Then of clot" — the "clot" is not the man in question either. "Then of a piece of flesh, formed and unformed", so we start here; the "piece of flesh" which is "formed", which started to take the form of a human being in the mother's uterus is divided into two parts, as doctors tell us, one part floats to the upper part of the uterus while the first part stays attached to the wall of the uterus and connecting them is the umbilical cord which nourishes the unformed to give the formed, in which life starts, before life is formed in it. So how about when it is in medical incubators in laboratories? I wouldn't call it a human being, nor would our religion, nor do I have right to consider it a human being. I wouldn't offer funeral prayer.

Dr. M. H. Ibrahim

May I explain some facts of the modern scientific findings which correspond to this facinating description in the munificent verse: first, after an ovum is fertilized, I'd like to assure Mawlana Sheikh Badr, the longest period on records of its life in laboratories is only 16 days, and after that the fertilized ovum goes out of its membrane and even if it is returned into the uterus it won't get embedded to form and embryo. After these 16 days, the fertilized ovum divides and multiplies into so many cells, and even after getting attached to the uterine wall, the preliminary protrusion appears only in a very small part of these cells and when this protrusion appears the ovum becomes faulty and will never produce an embryo and gets discharged. First, in the natural pregnancy when fertilization naturally occurs in the follopian tubes 60% of the ova don't get embedded and even after they get embedded a high percentage of these ova get aborted — the precentage of abortion is about 17%; women are never aware of this, but through measuring the level of certain harmones, we know that the menstrual period was nothing but an unnoticed abortion. In fact, this prelimin-

ary protrusion appears after the tenth day after an ovum is embedded and it appears quite often and sometimes it doesn't, so the ovum turns into a mole which may result in a malignant tumour, and is called "pre-embryo" — this is the scientific term, it is not called "embryo" but "pre-embryo".

Chairman, Dr. S. Al-Ateeqi

We can sum up the jurisprudence opinions....

Dr. Omar Al-Ashqar

I asked H. E. Sheikh Al-Salami after one of the sessions, "considering that in the Islamic Sharia abortion indemnity is payable when an aggression occurs against an embryo, what is the legal consequence for aggression against fertilized ova?" So he said that *"ghurra"* i.e. abortion indemnity would be payable, and I then said that if the number of fertilized ova was large; 10, 12 or 15 ova, would that mean 15 *ghurras* will be payable? If we call fertilized ova "embryos" then we'll have to apply the Islamic Sharia; when there's an aggression *"ghurra"* is payable — 15 or 18 *ghurras,* an astronomical sum of money. I believe that, even from the Sharia point of view, fertilized ova ar far from being called embryos.

Sheikh M. M. Al-Salami

I wouldn't have interfered, but now I have to since my name was mentioned. In fact. I told him that we have to be logically consistent; so if we consider that the fertilized ovum in the mother's uterus is inviolable and there shouldn't be any aggression against it leading to abortion. In fact I think we must differentiate between two different words being "inviolable" and being "respectable". I said that if the ovum after being fertilized aquires respectability when in the mother's uterus then it should have the same respectability outside the mother's uterus. So, whether we consider the beginning of life so, 60, 70 or 10 days after date of fetilization, then sanctity will be given to ova starting that date whether inside or outside the uterus; or make the borderline at a later date, it will still make no difference — where it is, does not affect the judgement. This is all I wanted to say. Hence, if a woman is pregnant with triplets and aborted three embryos, she will claim three *"ghurras";* and if a man kills 10 people by mistake, he'll have to pay 10 *"diyyas",* (blood money), the number doesn't offect the judgement in any way, I don't know why should there be that large number of fertilized ova? why don't we solve the problem from the very beginning and fertilize what we need only?

Sheikh Badr Al-Mutawali

When is *"ghurra"* payable? Is it payable as soon as an ovum gets embedded in the uterus or after it develops into human form? *"ghurra"* is not payable until it has a formed human shape. If it is still a "drop", a "clot" or a "piece of flesh" I believe that *"ghurra"* wouldn't be payable, *"ghurra"* is payable only when there is life. We considered that the proper start of life is when the ovum gets embedded in the uterus. However, when *"ghurra"* becomes payable is different from when life starts, provided that fertilization occurs inside the "belly", as evident from all the previous talk, when *"ghurra"* becomes payable is a different issue than when life starts; the embedding of ovum in the uterus even if we spoil it, doesn't make *"ghurra"* payable.

Sheikh M. M. Al-Salami

In fact, Sheikh Badr, we may spoil them. There is no reference in the Islamic legislation, as far as I know, that jurists differentiated between a certain time and another; they said whenever there's aggression against pregnancy in the "belly" resulting in abortion, the fact remains that for them, at their time, abortion couldn't be recognized unless the woman discharged something tangible — can be seen by the naked eye; so they based their judgement on that. However, if we accept that they gave inviolability to man starting from date of formation, we'll have to decide whether formation or human form starts from date of fertilization wherever it would then be 20 or 40 days or even 4 months later so that we can say that beginning is from this time. We have to maintain a clear cut opinion in order to have a clear logic, this is what I wanted to say. What some said about divisions to before or after four months is not what jurists said.

Dr. T. Al-Wa'i

When the ovum is settled in the uterus *"ghurra"* will be payable. The ovum may not get settled, but when it is proven to be settled, any aggression will then be against something well-established.

Dr. M. N. Yaseen

I'd like to speak about when *"ghurra"* would be payable because I've recently read about this issue and I know that jurists hold three different opinions. One opinion is that *"ghurra"* is only payable in case of "formed piece of flesh", i.e. when there is a blood clot *"ghurra"* will be payable,

and the jurists who hold this opinion are in fact, the majority. This is the least thing discharged for which *"ghurra"* would be payable and not earlier than that. I only wanted to clarify this point and that there are three opinions held by jurists.

Dr. I. Al-Sayyad

I'd like to go back to invoke the Munificent Qur'an:

THEREAFTER WE BROUGHT HIM FORTH AS ANOTHER CREATURE. BLEST THEN BE ALLAH, THE BEST OF CREATORS.

When is man included in the list of human beings created by Allah, highly glorified be He? When he goes through the stages of "a drop, a clot and a piece of flesh, formed and unformed", then "we brought him forth as another creature". Let us comment on the two munificent verses:

THEY WILL SAY: OUR LORD! THOU HAST MADE US DIE TWICE, AND THOU HAST MADE US LIVE TWICE NOW WE CONFESS OUR SINS.

And the first verse:

HOW WILL YE DISBELIEVE IN ALLAH WHEREAS YE WERE LIFELESS AND HE QUICKENED YOU; THEREAFTER HE WILL CAUSE YOU TO DIE, THEREAFTER HE WILL GIVE YOU LIFE, THEREAFTER UNTO HIM YE SHALL BE RETURNED.

The commentary that I felt was the most appropriate when I read it that life is the existence of soul in the body and death is the separation of soul from the body. The soul separates from the body to wherever Allah wants it to be — in Paradise, "in the bodies of green birds" like martyrs or wherever Allah wishes. Allah created all of us in "the world of atoms", our souls on one side and our bodies on another, and when the "formed piece of flesh" is mature Allah orders the angel to bring the soul from where Allah has kept it and breathes it into this "piece of flesh", then the human life begins and man stays alive since then; he gets born; leads his life on earth and when his soul separates from his body he dies — the second death, as he was dead before his soul was breathed into his body, then he lived starting from the uterine life until he dies in the earthly life and at Resurrection his soul comes back to him and then.

UNTO HIM SHALL YE BE GATHERED.

After his soul is back to him for the second life, he is gathered to Allah, highly glorified be He. Hence, man dies twice and is given life twice. This is the Qur'anic definition of human life, and what's before that is not consi-

dered human life especially after we have reached the concept of "tissue culture" whereby we take tissues from any living being, put them in a test-tube and they will grow, but we can't consider them a living being into whom soul was breathed and who have the inviolability of human life which Allah honoured with soul to join the list of creatures as "another creature".

Dr. E. Al-Sherbini

Doctors have raised two issues, one of them is already in practice in Kuwait and the other will soon be within a few days or weeks and that's why we open the door for discussion as they objected because they didn't receive answers to their questions. In fact, I'll sum up the opinions expressed so far to present them to the committee when they arrive with God's will.

The first issue: surplus fertilized ova which were not implanted into the mothers uterus, and during the discussions a new issue was added: the so called "post-zygote", or whatsoever name is given, which is an ovum that divided and multiplied into many cells. H.E. Sheikh Al-Khateeb, H.E. Sheikh Badr, Dr. Abu-Ghudda and Sheikh Al-Ghazali yesterday and as I understood from Dr. Omar Al-Ashqar and Dr. Al-Wa'i today said that they're worthless and there is no harm whatsoever in disposing of them. What they requested was that when the cell has grown into many cells they should out of respect to man, be respectably dealt with and buried, but that would be of no legal consequence in Fiqh. H.E. Sheikh Al-Salami corrected what he was claimed to have said yesterday and said that if we consider that life starts from the first day then these ova must be respected from the first day and advised that only the ova needed for use be fertilized so that this problem may be avoided, but if jurists considered that life starts later than that, judgement would be different. Dr. N. Yaseen spoke about when *"ghurra"* is payable and actually in the three cases he mentioned: if it is formed, thought that it was about to be formed or was blood that didn't dissolve in water; the meaning is that there is some type of formation.

The second issue that the docors urgently requested is cornea transplant because it is part of organ transplant, but yesterday when, Dr. Abdulrazzaq asked H.E. Sheikh M. Al-Salami, he said that it has different provisions since it is not a matter of life and death. Therefore, we'd like to discuss now the issue of cornea transplant because as Dr. M. O. Shabir wrote, there are probably thousands of people who need cornea trans-

plant which would provide them with sight to make them able to act effectively in life... etc. What is asked for now is a law that would allow occulists, at least, to take corneas of the dead-whether in accidents or other cases, to use them. I address the question to Sheikh Badr, Sheikh Ghazali, Sheikh Al-Khateeb and Sheikh Al-Salami, and I urge the chairman, for fear of wasting time, to postpone the questions related to abortion and other issues until we reach an opinion because there was no recommendation or discussion concerning the cornea transplant issue yesterday.

Sheikh M. A-Ghazali

My independent reasoning in this issue is that it is permissible to transplant a cornea from an eye that no longer can make use of it — because of death — to someone who is alive and can benefit from what is transplanted to him since this does not harm the dead and at the same time, benefits the living person. That someone benefits from something whose loss doesn't harm the other is not. religiously speaking, rejected, therefore I don't conceive any inadmissibility to transplanting a cornea or any other organ from a dead person or someone who is fatally injured to someone who may benefit from it. Al-Azhar, in our country, permitted autopsy, though they're quite aware of the Hadith of the Messenger.

> *"Breaking the bone of the dead is tantamount to breaking the bone of the living".*

However, they found that the living need autopsy to save themselves from many diseases, so they considered this benefit to outweigh the objection against it. Consequently, I don't see objection to organ transplant by religion.

Sheikh E. Al-Khateeb

I believe we weren't speaking about the permissibility and impermissibility of organ transplant in Yesterday's session. I believe the presentations and debate were on the sale of organs, and there is a great difference between the legal consequence for organ transplants and for sale of organs. I believe organ transplant, particularly cornea, is permissible but on certain conditions spicified by jurists. As for sale of organs, which is the issue discussed in the previous session yesterday, this is what is prohibited and what is dangerous to the lives of people because human beings are going to become like livestock whose organs are sold and bought, even man himself will be sold to gangs, that will appear in the future if not already existing, to be cut to pieces. Sale of organs is a very dangerous

issue. The permissibility of organ transplant is a perfectly human issue because it is conditional upon the approval of owner of the organ as when a person wills that after his death his cornea may be transplanted, as per the opinion of some jurists who permit such a will, and provided that also the family of this dead man accept it, and some other conditions; I believe that organ transplant is permissible. I'd also like to remind you that in Jordan a law on organ transplant was promulgated. It is a comprehensive law that permitted transplantation of cornea as well as other parts, e.g. kidneys and the like, except for the heart which was not included because it wasn't under consideration at the time when the law was made.

Sheikh M. M. Al-Salami

Before speaking about anything else. I'd like to clarify one point that occurred in Dr. Al-Sayyad's speech resulting from mixing between "human honour" and "human life" and we differentiate between the two. Man is evidently honoured from the minute he exists in his mother's "belly" until every atom vanishes from existence. Life is something else; if man dies this doesn't mean that he is no longer honoured, on the contrary, the Prophetic Hadith is very clear:

"Breaking the bone of the living".

So, man would still be honoured after death and must be buried and protected from wild animals and from the person who assaults a dead person by insulting him must be disciplined and discretionarily punished. Hence, we say that man, after death, keeps some human aspects which are less in importance as dead than they are as living. For if someone kills a living man, parity punishment will be applicable; while if he insults a dead man discretionary punishment will be applicable. And when man is in the mother's belly"; there is no doubt that the one who hit a woman on her belly and caused the abortion of her embryo committed two things: first, he committed a prohibited act and has to pay indemnity for that embryo which is the prescribed *"ghurra"*, the value of which is 1/10 of the *"diyyah"* (blood money), this is what the munificent verse meant, and what our Lord said in the Qur'an is very clear, while what Dr. Al-Sayyad deduced was not right. Now, let us consider the second issue, cornea. I said before, that we talked about transplanting an organ to someone in order to save his life by analogy to permitting the one who's about to die to eat from his own body or someone else's, in case of famine or for survival. Is it permissible for that one to eat from his own body or from the body of a dead person? This issue was raised, and it is similar to the, issue of kidney transplant, i.e.

when we transplant a kidney from one person to another to give him life, otherwise he would die. Cornea transplant is not of the same degree of importance, it doesn't save lives. Therefore, we can't just say that it is permissible because if this is permissible other things will likewise be permissible. This doesn't mean that I said it should be prohibited, but we should differentiate between what saves life and what doesn't; this is what I meant to say to Dr. Al-Samerraii about his question. As I said, we should wait until the matter is clear enough, though the others, may Allah bless them, have stepped forward and gave their opinions, but I'm still holding back because I can't yet recongnize whether it is permissible to take a cornea and who gives it — the living while alive or the heirs; and speaking of heirs, this is taken or the heirs; and speaking of heirs, this is taken from the West; the heirs have no right to the body of the dead — they, like the rest of the believers, are obliged to honour the dead and offer funeral prayers, burying him is not the concern of his family only but of the whole Islamic Umma.

Dr. M. S. Tantawi

In the research I presented on the legal consequences on organ sale and donation I dealt with three issues: the first is the legal ruling on trading in organs and I concluded that the opinion accepted is that it is impermissible to make the body of man a commodity to be sold and bought and that there are many texts prohibiting this and that the verifying jurists agreed that trading in human organs is impermissible, nor is it permissible to the person himself to sell any part of his own body, no matter what degree of necessity makes him do so, because it is outweighed by the necessity for saving a life from being exposed to perdition and because Allah, highly exalted and glorified be He, says:

> *AND SLAY NOT YOURSELVES; VERILY ALLAH IS UNTO YOU EVER MERCIFUL.*

The one who sells an organ of his own exposes himself to dangers and if he is selling it due to need for the necessities of life, there are many ways other than this one through which one can earn a living, i.e. by adopting the means which Allah, highly exalted and glorified be He, made legitimate to earn a living — I've given a lot of examples in this connection. I came to the conclusion that there is one case, which is one of the rarest: when a man's life is dependent upon transplanting an organ from a living man's body, and there's no one of his friends, family or others who would donate this organ to him while his life is dependent upon this organ and

there is no other available alternative, and there is someone who offers to sell the organ needed of his own body, and if a reliable doctor judges that taking this organ from this person doesn't affect him seriously — I said that the word "seriously" is meant here in particular because there is special use for every organ for Allah, didn't create an organ unless it is of use; so if it doesn't affect him seriously while the life of the other person is dependent on this organ, as per a doctor's decision, and the person who wants to give an organ of his body to that one whose life is dependent on it made it conditional upon paying a price, then in this case it is permissible because it is a necessity and there's no other way out.

As for the second case which is donation, we have seen that, as I quoted many jurists, donation is permissible provided that certain conditions are fulfilled; the most important of which is the judgement of a reliable doctor that this donation doesn't affect the donor and is beneficial to the person it is donated to. In this case it is permissible to donate a human organ.

The third case is organ transplant from the dead to the living, and I said that this is the slightest form of the case because taking from the dead to keep the life of the living, subject to a reliable doctor's judgement, is of no consequence as it goes under the famous sharia rule of "necessity knows no laws", and the dead doesn't lose anything when an organ of his is taken whereas it will be of benefit to the living.

Chairman, Dr. S. Al-Ateeqi

Thank you. We have some more questions: what if an ovum is fertilized and after a few hours the husband dies, shall we carry on the work to implant it into the mother's uterus or is the matrimonial relation considered over and the ovum shouldn't be implanted into the mother's uterus?

Regarding the use of sperm after husband is dead, I've read some Shafi'ite literature, a book of Al-Sharqawi that included a provision for a case close to the one under discussion now: they spoke of the slave women; if a slave woman took the sperm of her master, used it in his life time or after his death and consequently got pregnant, she would become the "mother of a child" and the provisions for "mothers of children" would apply to her. Can we analogize to this case the case of the wife? The issue is left open for research. However, jurists in fact, speak of the maximum period of pregnancy, and the differences between the schools around it are known and we don't need to discuss them. If she gives birth within the

maximum period of pregnancy — the Fiqh maximum, not the legal, because the law was made following a certain opinion, but we're concerned here with Fiqh difference among the schools which is known to jurists; so if a woman gives birth during the period specified by the Fiqh schools, the provision for that is also known in Fiqh and consequently are all the provisions consequent to the case of a slave woman getting pregnant in the life of her master or using his sperm just before his death.

Chairman, Dr. S. Al-Ateeqi

A question: If we permitted abortion to avoid deformities, and before that, disposal of fertilized ova, would the day come when we permit the killing of all the disabled and deformed to attain the ideal world aspired to by the man of this century whom I consider to have gone far away from divine law and Sharia? I am sure that right knowledge is the one that guides to faith not the one that guides to exceeding proper bounds and separating one from faith. Please, clarify what is permitted and what is not.

Sheikh M. Al-Ghazali

There's no correlation, mental or otherwise, between permitting to get rid of an embryo that will definitely be born deformed and what is said by the fellow who asked this question. We're not, at all, thinking of killing the disabled or the deformed, and that never occurred to us. The question we answered yesterday was about the case when medicine by way of scientific cetainty tells us that an embryo will be born mentally retarded, so what does the nation benefit from increasing its population with the mentally retarded? We said, let us avoid this harm by abortion provided that it is done in the first months during which science can tell, as I heard, that this embryo will definitely be born mentally retarded or afflicted with a disease that wouldn't allow him to function as a normal human being; and I said that if it got formed and became completely shaped, I withhold from passing a judgement on such a case because I don't have anything to base my judgement on. This is what I said and there's absolutely no one who can think that a world could exist without any deformed or disabled people and that those should be killed; this can't be thought of by a human being.

Chairman, Dr. S. Al-Ateeqi

Thank you. A question: a child born out of wedlock. The father denied that he impregnated the woman, the mother took the baby to raise. How can a birth cetificate and other official documents be issued to her with out

filling in the father's name. This is a true case and the child is still without a birth certificate. What is the Sharia opinion considering that such official documents are so important these days?

Sheikh M. A. Ghazali

This is a legal issue not a Sharia issue. The law-maker refuses to adopt this child and at the same time it is impossible in the Sharia to impose it on some man as his own.

> *CALL THEM BY THEIR FATHERS, THAT WILL BE MOST EQUITABLE IN THE SIGHT OF ALLAH. AND IF YE KNOW NOT THEIR FATHERS THEN THEY ARE YOUR BRETHREN IN RELIGION AND YOUR FRIENDS.*

The law must be amended to receive and accept this unwanted guest in the community because he's a brother of ours and we owe him loyalty and support. The law must be amended but we can't amend the Sharia to agree with the law; that's impossible.

Dr. Abdullah M. Abdullah

I was interested in this issue a long time ago and I wrote a book on familyless children, then I stopped. As said by our Imams, I don't want, in fact, to stop any body, but I read something that stopped me and I'd like to present it to this gathering as the time and place are apt; a child born out of wedlock, as H.E. Sheikh Ghazali said, is an unwanted guest but we have to accept him. In fact some of the later Imams: Al-Hassan Al-Basri, Muhammad Ibn Sireen, Ishaq Ibn Rahaweih and Ibrahim Al-Nakhi said that a child born out of wedlock is attributed to the one who made coitus or the fornicator; the reference is available in Al-Mughni by Ibn Qudama, vol. 6, p. 315, under inheritance and the born out of wedlock. The great Ibn Taimiya, says that a child born out of wedlock is attributed to the unwed mother as proven. This is mentioned in Ahkam Al-Awlad, by Al-Barri. Imam Abu- Hanifa says, "I don't see any harm, if a man fornicates a woman and she consequently gets pregnant that he marries her, though pregnant, in order not to expose her, and the child is his own". Reading Fiqh literature, we find that all the schools say that the adulterer/fornicator may marry the daughter he begot out of wedlock, that is the point concerning establishment of his fathering her whereas the semen emitted was in a state of adultery/fornication is of no legal consequence in this Sharia.

By Allah, this is what the four schools say, but in our legislations we went beyond, the four schools and adopted the obligating recommenda-

tion away from the four schools. There are researches, on legislation fabrication which were presented to the Research Academy, Cairo. Fabrication is becoming an issue as we hear of things like hymenorrhaphy and the like. We shouldn't reject every thing we hear for the first time immediately, for there may be a benefit in it. It is true that "the child is for the bed and stone for the one who committed adultery/fornication", but they gave an explanation to this Hadith when they said attributing the born out of wedlock is established; they said that the fornicator deserves punishment but what is the sin of the child; attributing the child in a crime committed by this fornicator is a separate issue. In fact I pointed out what Imam Abu Hanifa said of the fornicator marrying the fornicated, in order not to expose her, so she becomes his wife and the child is attributed to him; we should listen to this. Also, Imam Ibn Taimiya who is one of those who gave their independent reasoning and whose opinion is now followed every where, though he was accused of heresy and infidelity and that he definitely acted against consensus *(Ijma')*. They accused him of heresy and infidelity yet his opinion is now the one followed in many cases.

Sheikh M. Al-Ghazali

The issue presented by the virtuous colleague is different from taking someone from an orphanage and attributing him to myself as happens nowadays. The law acts differently in such cases, the Hanafites have what is called "proclamation of kinship attribution", in what I read of the Hanafite school it is permissible that I proclaim that this is my son and as long as it is admissible that such a child be born to such a man then the proclamation is acceptable and the child is attributed to the proclaimer. Since he confessed that the child is his, then it is his and he is not to be asked how he begot it because we don't want to reveal that the child was born out of wedlock or anything of the sort. The legislator here is sort of covering the crime or trying to effect rehabilitation some how. However, this is different from the issue considered; what the Hanafites said and probably other Imams as well is different from the issue of permitting adoption.

Sheikh E. Al-Khateeb

I believe that a child born out of wedlock, whether the fornicator admits kinship or not, must not be attributed to the father but only to the mother. Whether the fornicator confesses or not the child must not be attributed to him because kinship attribution of children is not a legal consequence of fornication since the children are honoured while the fornicators should not.

Sheikh B. Al-Mutawali

When the Hanafites spoke of proclamation of kinship attribution they said on condition that the proclaimer doesn't say that child was born out of wedlock, he should say that this is my child only, but if he says that it was born out of wedlock then it is not acceptable to the Hanafites. Their opinion is that if the proclaimer says this is my child, and it is admissible that such a child may be born to such a man, and the child's father is unknown — on this condition that the child's father is unknown, such a proclamation is accepted and is assumed to be a righteous act.

Chairman, Dr. S. Al-Ateeqi

A question: What is your opinion of blood selling, though blood is definitely a constituent of man? what is the opinion of jurists?

Dr. M. S. Tantawi

We said that selling is impermissible, what is permissible is donation; i.e. the majority of the Ulama see that selling is impermissible while donation is permissible considering that after donation new blood is produced to replace what was donated, etc. But to be sold and to turn into a commodity sold and purchased, to become a trade, this is what the majority of jurists prohibited, for there is a difference between selling and donating.

Chairman, Dr. S. Al-Ateeqi

What if it is a reward?

Dr. M.S. Al-Tantawi

If the reward takes the form of selling, then it is a sort of unacceptable circumvention. Any way, as far as I know, donation is permissible because there is a difference between organ donation and blood donation because blood is automatically replaced later but as far as selling is concerned, the majority of jurists prohibit it.

Sheikh M.M. Al-Salami

We said before the issue of blood sale is a new unprecedented one, and the one which is similar to it is milk sale for both of them are renewable, and that the blood donor replaces the blood donated after a period of time set and defined by doctors. So what I believe is that blood may be

sold as well as donated because donation and sale are, on the one hand, similar and, on the other, they are like hiring someone to do some work; the person hired, he exerts a physical effort, burns some calories which are renewed and replaced later. The human is starting to discover today one after another. This makes me think that there is no difference between the human blood and the calories which are burnt as a result of work, and as it is permissible to hire a man and burn some of his energy through effort exertion in return for a pay, it is also permissible that he sells of his blood the amount that would not harm him. Man is definitely prohibited to hire himself out to do what is dangerous to his life, but blood, within the limits of safety, is permissible to be sold and donated.

Dr. E. Al-Sherbini

We have now two opinions: the first is that it is impermissible, and the other is Sheikh al-Salami's, that it is permissible within the limits of safety. Sheikh Al-Ghazali also sees that sale is permissible. In fact what happens here in Kuwait is to encourage donations but when in need blood is bought, though this became very limited when the problem of AIDS appeared and blood is no longer accepted from anyone who offers it for safety purposes. In fact, there are some questions. I don't know who sent them but I tend not to present them because they're sort of Fiqh riddles: what is the legal consequence of artificial insemination between husband and wife if it takes place during the day — time in Ramadan?

A doctor says that there are many deformed people who are talented and this is a compensation from Allah. So why don't we reflect more interest, humanitarianism and sense of giving for them, — the mentally retarded, for example, may become an artist?

Sheikh E. Al-Khateeb

This question about the mentally retarded reminds me of certain information that I read about Hitler when he started building Germany. When Hitler came to power, he started building the german army, so he screened the youth of Germany through medical examination and found out that 85% of the German youth were not eligible for military service. Hitler was secular, didn't believe in religion nor convention, he only believed in science — he was secular and scientific. Of the rules that he set for building the modern German army is nutrition, because it was found that the German youth were anaemic as a result of deficiencies of nutrition, so he established a nutrition system that lasted for five years. In addition, he

set a rule that anyone who is an idiot or has certain hereditary diseases be sterilised so as not to reproduce, aiming at securing a new German generation free from idiots, dieseases and deformities. This is the saying or rather the doing of a man who had no religion, values, nor did he have any Sharia to set his life systems right; how many of the deformed he killed?

The lady who asked the question says that the deformed or the idiot may be an artist or have a certain talent. This backs up the Islamic point of view that it is impermissible to try to kill a human being as long as he has life, no matter what his condition is — mad, idiot or whatever his degree of retardedness might be, it is absolutely impermissible even when he is in the mother's "belly".

Dr. E. Al-Sherbini

Dr. Ma'amun mentioned some very important facts. I suggest that he writes them down and hands them in to the Drafting Committee. Those facts will make it easier for doctors and jurists when they consider abortion, the fact that many of the ova fertilized inside the mother's uterus or "belly", 60% of them, don't get attached and are discharged and that even after getting attached some get discharged. I believe that this is very important and would have a great effect if forwarded to the Drafting committee.

Dr. S. Al-Ateeqi

The recommendations session will be held right after prayers.

Dr. Abdul Rahman Al-Awadi

Praise be to Allah.

Ladies & Gentlemen.

May the blessings and peace of Allah be upon His Messenger.

I apologize for the delay in recommendations. Now that they have been handed out, I believe we'll start reading them one by one and, with God's will, will take your remarks, if any, before we move to the next recommendation, but there are two recommendations that are not yet drafted. Let us start reading the recommendation, now. I call upon Dr. Salah Al-Ateeqi to read them out.

PART FIVE

RECOMMENDATIONS



RECOMMENDATIONS OF THE SYMPOSIUM ON "ISLAMIC VISION OF SOME MEDICAL PRACTICES"

Preamble

This symposium delegates H.E. the Chairman of the Organization to convey the deepest appreciation and thanks to His Highness the Prince of Kuwait for Kindly sponsoring the Organization since its establishment, for his continuous encouragement of and interest in the Organization's activities, and for receiving representatives of the symposium.

The Symposium recommends that the Organization positively responds to the directives of His highness given during the visit, of the importance of shedding light on the achievement of the Organization, endeavors, the publications of which should not be limited to the Islamic world but rather extend to reach the entire humanity to guide it to its welfare and salutation and link it with the straight path and the clear divine guidance.

Appreciation is also due to His Highness the Crown Prince and Prime Minister for the warm meeting, his interest in and concern for the Organization's activities and continuous progress, and his advice to abide by Allah's religion, guidance and provisions.

Confidentiality in the Health Profession

1.a. A secret is the information with which a person entrusts another, requesting keeping it, whether request be explicit or implicit, was made prior to or following the act of telling information. It also includes presumptions signifying withholding such or conventionally deemed undivulgeable. As well as one's private affairs and demerits which he would hate to make public.

b. Secrets are deposits in trust and those with whom secrets are entrusted must keep them as required by the Islamic Sharia, the ideals of honour and moral codes.

c. Secret divulgence is originally prohibited and is punishable in Sharia, professionally and legally.

d. Secret keeping is emphatically a duty upon members of such professions which would be undermined by secret divulgence, e.g. health professions, because to them resort those in need of sincere counselling and help who should be confident that their secrets are in safe keeping.

2. Excepted from the obligation of secret keeping are cases where keeping the secret will cause a harm severer to the one entrusting than that caused by divulgence or where divulgence of secret will achieve a benefit preponderant over the harm caused by withholding. These exceptions are of two categories:

a. Cases where divulgence of secret is deemed obligatory based on the rule of taking the action that causes the lesser harm and the rule of achieving the public benefit which requires bearing the private harm to avert a public harm if that is deemed necessary. These cases are of two kinds:

1) averting an evil detrimental to the community.

2) averting an evil detrimental to an individual.

b. Cases where divulgence of secret is permissible to:

1). achieve a social benefit, or

2). avert a public evil,

abiding in this by the Sharia intents and priorities for protecting religion, life, mind, property and offspring.

c. Added to these two categories are cases where the one entrusting secrets accepts that his secret be divulged. Divulgence in such cases must be within the limits allowed by him and he has the right to withdraw such waiver.

d. Exceptions for cases obligating or permitting secret divulgence should be clearly enumerated in the Law or Health Professions Code and other laws with details as to how and to whom divulgence is to be made. Competent authorities should create the adequate public awareness of such cases.

3. A Muslim doctor, who shares in public responsibility as a reformer a counsellor and a preventar of harm, should try to avoid resorting to di-

vulgence of secrets made known to him through his professional practice, though permissible by virtue of cases excepted above, by first assuming his corrective role to protect those in danger, whether patients or otherwise, by guiding his patient to the straight path assisting him to stand on his feet again, and the others to avoid the consequent dangers, with a view to psychological rehabilitation and reconciliation of people.

In so doing a Muslim doctor may employ the method of "pun" through which rights are not wasted and facts are not forged.

Difference between Law and Sharia

4. The symposium discussed the "Difference between Law and Sharia" and from the presented examples of medical practice in the Islamic countries, it was clear that generally speaking there is hardly any situation that would be embarrassing to the doctor in practice by divergence of law and sharia.

Adhering to Islamic Sharia is a general duty on all Muslims whether members of the health professions or not.

Therefore, if the positive law is in conflict with the Sharia, then Law must be amended in accordance with the Sharia. A Muslim doctor must be committed to the upright Sharia.

5. The symposium recommends that curricula of health sciences colleges and institutes as well as continuous training include, for medical practitioners, an orientation to the Sharia and Law provisions for their rights, duties, competence and responsibilities in regard to the practice of the health professions.

Sale Of Organs

In the light of the established Sharia, the opinion of jurists on permissibility of organ transplantation under the circumstances and conditions set forth by the Sharia, the symposium discussed "Sale of Organs" and reached the following conclusions:

6. The best way to obtain organs is through people's compassion for each other leading to donation of organs from dead bodies either by will or approval of heirs, as well as from bodies of dead people whose relatives are unknown.

7. The opinion of the majority is that it is also permissible to obtain organs by donation from living persons patients provided that sound conditions and controls are followed including causing no harm to the donor, or pressuring him to donate his organs.

8. Sale of organs is prohibited. However, if organs cannot be obtained by donation and have to be paid for, then, it is permissible as per approval of the majority of participants. It is a prohibition made permissible only in cases of necessity. Some participants hold the opinion of prohibition.

9. In all cases obtaining organs, especially in critical cases, should not be left to competition between rich and poor patients; the state should establish and authority to control it and avoid its perils, managing it according to a prescribed detailed Law.

Plastic Surgery: Medical Concept and Practice

The symposium discussed "Plastic Surgery" and reached the following conclusions:

10. Surgeries to treat congenital or aquired deformities to restore normal shape or function of an organ are permissible in the Sharia.

The majority hold the opinion that this provision is also applicable to the repair of a fault or improve an ugly appearance that causes a person to suffer physically or psychologically.

11. Impermissible are the surgeries that would change the normal creation of the body or organ; those meant to disguise criminals to dodge justice; those with fraudulent intentions and those just fulfilling whims.

12. Surgeries that appeared in certain communities, known as sex change operations, giving in to stray whims are definitely prohibited. However, operations to decide and restore the real sex in cases of pseudo-hermaphrodite are permissible.

Fate Of Fertilized Ova

13. The ideal situation is to have no surplus of fertilized ova. This can be achieved if scientists continue research to find a way to preserve unfertilized ova capable of normal fertilization when required. The symposium recommends that scientists expose to fertilization only the number of ova that will be introduced. If that was followed we would not be left with surplus fertilized ova.

Nevertheless, if there is a surplus, the majority hold the opinion that fertilized ova are not made inviolable by the Sharia at all, and are not respected until they are embedded in the uterine wall, and therefore, it is not prohibited to destroy them. Some, however, hold the opninion that a fetilized ovum is the first phase of the human being honoured by Allah. When choosing between destroying fertilized ova, using them for purposses of scientific research or leaving them to die naturally, the last option seems to be the least prohibited since it does not involve positive aggression on life.

14. It was unanimously approved to emphasize the fifth recommendation of the symposium on "Reproduction in Islam" regarding the prohibition of implanting a woman's fertilized ova into another woman's uterus. Adequate precautions must be taken to prevent the use of fertilized ova in such an illegitimate pregnancy. And also to emphasize the fourth recommendation of the same symposium regarding warning against experiments aiming at changing the normal creation of Allah or using science for purposes of evil, wickedness or sabotage, and the symposium recommends that controls of the Sharia be made as a guarantee against such practices.

Study On: Menses, Puerperium and Pregnancy: Minimum and Maximum Periods

In the light of medical and Sharia studies presented, the participants reached the following conclusions:

15. Minimum and Maximum Menstrual Period and Cycle: Doctors agreed with a Fiqh opinion which says that the minimum period of menstruation is a drop of blood, while the maximum differs from one woman to another.

Bleeding between menstrual periods is medically considered abnormal and is attributed to many pathological causes. There is no clear-cut demarcation between normal menstrual bleeding and that effected by a disease, for there is an allowance of one, two or three days to regular menstrual periods, taking into consideration other pathological symptoms like excessive bleeding and other symptoms as well as results of clinical and laboratory examinations.

The symposium recommends that Muslim doctors give more importance to differentiation between menstruation and other bleeding occuring between menstrual periods, as well as deciding on the maximum period of menstruation by conducting necessary researches. As for the menstrual

cycle (which is the menstrual period and the purity period following until the next menstruation occurs): If the cycle is normal (i.e. the ovary secretes an ovum), for most women the cycle is 28 days, the minimum is approximately 3 weeks while the maximum is unlimited.

16. Minimum Pregnancy Period: It happens that the uterus expels pregnancy at any of its stages; this is called abortion if the fetus is nonviable and is called delivery if the fetus is viable, and the new horn is premature if pregnancy period is less than 37 weeks.

The demarcation between abortion and delivery used to be 28 weeks but with the progress of medicine which improved the chances of survival for younger fetuses, the demarcation is lowered to 24 weeks which conforms to the Sharia provision that considers the minimum period of pregnancy until delivery to be six months.

17. Maximum Pregnancy Period
Doctors decided that pregnancy grows from the time of fertilization until birth depending on the placenta for nourishment and that originally the period of pregnancy is approximately 280 days, starting count from the first day of the last normal menstruation period.

If delivery is delayed the placenta will still serve the fetus efficiently for two more weeks then it will start suffering starvation to the extent that the percentage of fetal death during the 43rd and 44th weeks is high; the fetus rarely escapes death when it stays in the uterus for 45 weeks.

However, just to include the rare and the abnormal case the period is extended two more weeks to become 330 days, though it has not been known yet that a placenta was as durable as this.

(The Law, to be more on the safe side and depending on some Fiqh opinions besides the scientific opinion, extended the maximum pregnancy period even more to make it one year).

18. Mimimum and Maximum Period of Puerperium: The Medical opinion presented in the symposium agreed with some of the Fiqh opinions that consider puerperium to be what is discharged from the woman after delivery or abortion until the site where the placenta was attached in the uterine cavity heals. It starts as blood then it turns to a yellowish discharge until it stops, and its minimum period is not determined but its normal maximum period is six weeks, and if it stays longer than this it is considered pathological like intermenstrual bleeding; it could be caused by placentaal remnants, in the uterus or atony of uterus that leads to failing to

stop bleeding, or other causes that need to be diagnosed and treated accordingly. When puerperium is over, it may be followed by menstruation or a short or long period or purity.

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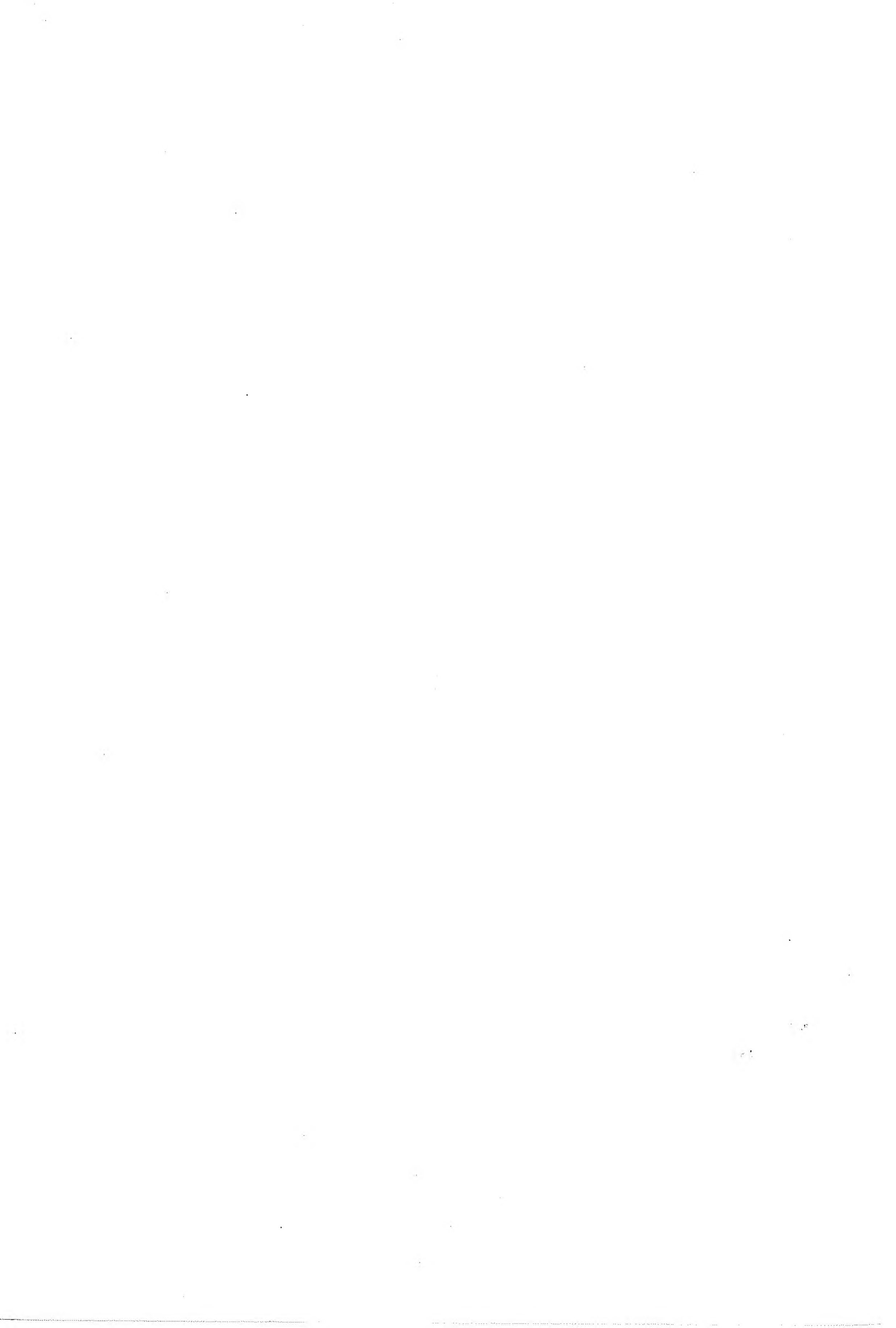
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